166.

SUPREME COURT OF THE UNITED STATES.

No. 91.

EBER B. WARD, SURVIVOR OF HIMSELF AND SAMUEL WARD, DEC'D, OWNER OF STEAMBOAT "DETROIT," APPELLANT,

vs.

CHARLES THOMPSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

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Pleas before the judges of the circuit court of the United States for the seventh circuit and district of Michigan, at the district court-room in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, Hon. John McLean, one of the associate justices of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

In the case of EBER B. WARD, survivor of himself and SAMUEL WARD, deceased, owner of the steamer Detroit, Appellant,
vs.
CHARLES THOMPSON, Appelleee.

DISTRICT OF MICHIGAN, *ss.*

Be it remembered, that on the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, the said appellant, by Towle, Hunt & Newbery, his attorneys and proctors, came into the said circuit court of the United States for the seventh circuit and district of Michigan, before the judges thereof, according to the statute and the rules of said court, and filed a transcript of judgment or decree rendered in the district court of the United States for the district of Michigan, which said transcript is in the words and figures following, to wit:

Transcript from U. S. District Court of Michigan. Filed March 28, 1857.

United States of America, District Court of the United States for the district of Michigan. In admiralty.

In the matter of the libel and claim of EBER B. WARD, on behalf of himself and of SAMUEL WARD, owners of the steamboat Detroit,
vs.
CHARLES THOMPSON.
No. 172.

Pleas before the judge of the district court aforesaid at Detroit, in said district, of the term of March, anno Domini eighteen hundred and fifty-seven; Towle, Hunt & Newbery, libellant's proctors; Lothrup & Duffield, claim'ts' proctors.

Attachment in personam, with clause to attach goods and chattels in case defendant should not be found.

United States of America, district court of the United States for the district of Michigan:

[L. S.]

The President of the United States of America to the Marshal of the district of Michigan, greeting:

Whereas a libel hath been filed in the court aforesaid on the

twenty-sixth day of June, anno Domini eighteen hundred and fifty-five, by Eber B. Ward, survivor of himself and Samuel Ward, owners of the steamboat Detroit, against Charles Thompson, in a cause of contract, civil and maritime, for certain damages alleged to have been sustained by said libellants by reason of the wrongful actions and doings of said Charles Thompson therein alleged to have been committed, to his damage eight thousand dollars ($8,000,) and praying that a warrant of arrest may issue against the said defendant, with a clause therein, if he cannot be found, to attach his goods and chattels to the amount of the above sum: Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said district court, at the U. S. district court-house, in the city of Detroit, in said district, on the first Monday of August next, ensuing; then and there to answer the said libel, and to make his allegations in that behalf; and if the said defendant cannot be found in your district, that you attach his goods and chattels in your district, to the amount sued for; and have you then and there this writ, with your return thereon. Witness the honorable Ross Wilkins, judge of said court, this twenty-sixth day of June, in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

WM. D. WILKINS, *Clerk.*

HUNT & NEWBERY, *Libellants' Proctors.*

Appointment of Deputy to serve Attachment.

U. S. MARSHAL'S OFFICE, *Detroit, June 26th,* 1855.

I hereby appoint Moses H. Esterbrook a special deputy U. S. marshal for the district of Michigan, for the service of the within writ, and require him to make due return of his doings in due time, said appointment being made at the special request and risk, responsibility and liability of Eber B. Ward, the within named libellant.

GEO. W. RICE,
U. S. Marshal District of Michigan.

Return of service of Attachment.

I hereby certify that the within named Charles Thompson cannot be found in my district, and I have seized the steamboat Kalolah, her tackle and apparel, said boat, &c., being the property, goods and chattels of the said Chas. Thompson, as I verily believe, and now have them in my possession, subject to the order of the court.

Mackinaw, June 28th, 1855.
Fees of service $26 00.

MOSES H. ESTABROOK,
Special Dep. U. S. Marshal.

Stipulation to answer Judgment.

District Court of the United States for the district of Michigan, ss.
In admiralty.

On this eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-five, before Will'm D. Wilkins, a commissioner, duly appointed and empowered to take acknowledgments of bail, affidavits and depositions, &c., within the district of Michigan, in the matter of the libel and claim of Eber B. Ward, on behalf of himself and of Samuel Ward, owners of the steamboat Detroit, against Charles Thompson, in a cause of contract, civil and maritime, moved and prosecuted in the district court of the United States for the district aforesaid, which day personally appeared the said Charles Thompson, and produces for surety Patrick Tregent, of Detroit, in said district, and the said Charles Thompson and Patrick Tregent submitting themselves to the jurisdiction of the court, bound themselves, their heirs, executors and administrators, in the sum of five thousand dollars, unto the said Eber B. Ward, that the said Charles Thompson shall abide and answer the decree of the said court in the aforesaid cause; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chattels, lands and tenements, wherever the same may be found, to the value of the sum above mentioned.

(Signed) CHA'S THOMPSON.
(Signed) PATRICK TREGENT, Jr.

Taken and acknowledged this eleventh day of August, A. D. 1855, before me. WM. D. WILKINS,
U. S. Commissioner 7th circuit and district of Michigan.

District of Michigan, *ss.*

Appeared personally Charles Thompson, of Toronto, Canada, and Patrick Tregent, of Detroit, Michigan, and made oath that they are respectively worth the sum of five thousand dollars of lawful money of the United States of America, after payment of their just debts.

(Signed) CHA'S THOMPSON.
(Signed) PATRICK TREGENT, Jr.

On the eleventh day of August, 1855, the said Charles Thompson and Patrick Tregent were sworn to the truth of the above attestation, before me. WM. D. WILKINS,
U. S. Commissioner 7th circuit and district of Michigan.

District of Michigan, *ss.*

I do hereby approve of the within bond, and of the sureties therein named, as sufficient. Given under my hand at Detroit, in said district, this 11th day of August, 1855.

(Signed) ROSS WILKINS,
U. S. District Judge, Michigan.

Libel. Filed June 26th, 1855.

In the District Court of the United States for the district of Michigan. In admiralty.

To the Judge of said Court:

DISTRICT OF MICHIGAN, *ss.*

The libel of Eber B. Ward, survivor of himself and Samuel Ward, owners of the steamboat Detroit, against Charles Thompson, in a cause of contract, civil and maritime, alleges—First. That said Eber B. Ward and Samuel Ward were the owners, in the year 1852, of the good steamboat Detroit, of the burden of 360 tons or thereabouts, and enrolled and licensed for the coasting trade on the lakes and navigable waters connected therewith. Second. That said Charles Thompson is not a resident of this State, and has not resided within this State for three months, and much longer, immediately preceding the time of making this libel. That said Thompson is indebted to this libellant in the sum of five thousand dollars, upon express contract over and above all legal set-off to the knowledge of this libellant. Third. That during the month of June, 1852, the libellants chartered the said steamboat Detroit to said Thompson for two years as follows: this libellant was to furnish said steamboat to said Thompson in good order and condition, which he complied with in all respects. That said Thompson was to run said boat between Penetanguishene and other parts of the Georgian bay and the Sault Ste. Marie, as a passenger and freight boat. That he was to employ good and careful and competent officers and men on board of said boat, except the clerk, who was to be employed by this libellant. That the clerk of the said boat was to receive all the earnings of the said boat; and after paying her expenses, to remit the first net $6,000 to this libellant, and one-half of the further net proceeds.

Fourth. That said Thompson did not use said boat as he had agreed to do, but employed her as a trading boat, to the damage of this libellant of one thousand dollars ($1,000). That he, said Thompson, did not employ good and careful men, and competent men, but the contrary, and that by their carelessness and incompetency the engine of said boat was damaged other five hundred dollars ($500), or thereabouts. That owing to a like cause the said boat was set on fire and damaged to the amount of fifteen hundred dollars ($1,500). That instead of using said boat for the benefit of all concerned, and paying her earnings to the clerk of said boat, he used it for the benefit of himself, in that he used the said boat for paying a large amount of his own private debts, and in that he received large sums of money from the British or Canadian government, or from some service, and did not account or pay the same, as he was bound, to the clerk of said boat or this libellant, to his damage other two thousand dollars ($2,000), or thereabouts.

Fifth. That in procuring said charter-party, he, said Thompson, used false and fraudulent representations to this libellant, representing that said route was an extraordinary good one, and that the boat of said libellant, under the charge of him, the said Thompson, could make during one year the sum of $10,000 in the clear, when, in fact and truth, the said boat on said route was not worth $4,000 in the clear, to the damage of said libellant of other four thousand dollars ($4,000.)

Sixth. That all and singular the premises are true, and therefore the libellants pray that a warrant of arrest, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said Thompson, with a clause herein, if he cannot be found, to attach his goods and chattels to the amount of $8,000; and that he be cited to appear and answer, upon oath, all and singular the matters so particularly propounded, and that this honorable court would be pleased to decree the payment of the damages aforesaid with costs, and that the libellants may have such other and further relief as in law and justice they are entitled to.

(Signed) E. B. WARD.

Sworn and subscribed before me this 25th day of June, 1855.

(Signed) W. D. WILKINS,
Cl'k U. S. Dist. Circuit Court, dist. Michigan.

(Signed) HUNT & NEWBERRY,
Proctors for Libellant.

Order of Judge endorsed on libel.

In case that the person of the respondent cannot be found, that his property be attached, to wit, his goods and chattels for said amount of eight thousand dollars ($8,000).

(Signed) ROSS WILKINS,
Dist. Judge.

Detroit, June 26, 1855.

Answer. Filed Aug. 8, 1855.

To the Hon. Ross Wilkins, Judge of the District Court of the United States for the district of Michigan:

The answer and exceptions of Charles Thompson, of Toronto, in Canada West, to the libel of Eber B. Ward, survivor of himself and Samuel Ward, owners of the steamboat Detroit, in a cause of contract, civil and maritime, alleges as follows:

First. The respondent admits that he has been informed and believes it to be true, that in 1852 the said Eber B. Ward and Samuel Ward were the owners of said steamboat Detroit; that the same was of 360 tons burden, and enrolled and licensed as therein alleged.

Second. The respondent admits that he is not a resident of the United States, and has not resided therein for three months and more

preceding the filing of the libel in this cause, but he denies that he is indebted to the libellant in the sum of five thousand dollars, as in said libel alleged, or in any other sum whatever, and on the contrary he avers that the libellant is largely indebted to him.

Third. The respondent denies that the libellant ever chartered to him the said steamboat Detroit, as in said libel is alleged, but he avers that by articles of agreement bearing date the tenth day of June, A. D. 1852, the said Eber B. Ward and Samuel Ward entered into an agreement of copartnership with this respondent, touching the use and navigation of said steamboat Detroit, for the residue of said year, and for the year A. D. 1853, a copy of which articles is hereto annexed as a part of this answer, and that this is the only agreement ever made by this respondent with the said persons touching said steamboat.

Fourth. The respondent denies all and singular the charges of damages set up in said libel. He denies that he used said boat other than as he had a right to do under said articles. He denies that he employed careless, incompetent, or unsuitable men on said steamboat, or that said boat was damaged through any carelessness or incompetency on the part of such men. He denies that he used any funds whatever derived from said boat for any purpose, or in any way not authorized by said articles, and he utterly denies that he ever used any false and fraudulent representations, as in the libel alleged, in order to procure the making of said articles of agreement.

Fifth. The respondent further says, that he was in good faith proceeding to observe the said articles of agreement in all things, when the said libellant having lost one or more steamboats on Lake Erie, and being short of boats, became desirous of obtaining repossession of said steamboat Detroit. That to the end of acquiring such repossession, he fraudulently and wickedly contrived the seizure of said Detroit while engaged in navigation, as provided in said articles, by or in the name of the collector of customs of the port of Detroit, under the pretext of some violation of the revenue laws of the United States. That by means of said seizure, said Detroit was taken away from the respondent on or about the twentieth day of September, A. D. 1852, and brought to Detroit, where she was immediately delivered into the possession of said libellant, who forthwith employed her in his own business. That no legal proceedings whatever were resorted to or had against the said steamboat Detroit under said seizure. That respondent, by his agent, applied in vain to the persons who seized said boat, and at the custom-house in Detroit, for any specification of the alleged offence of said steamboat, and to this day has never been able to learn anything beyond the general pretext that some violation of the revenue laws had been committed by said steamboat.

Sixth. The respondent avers, that by reason of the foregoing

premises the said libellant committed a wilful and deliberate breach of said articles, to the very great damage of the respondent, and that he still is indebted to the respondent therefor.

Seventh. The respondent further shows, that after the execution of the foregoing articles of agreement, this respondent brought an action of trespass in the case, upon premises against the said libellant in the court of Queen's Bench for Upper Canada, to wit, at the Hilary term of said court, A. D. 1853. That a portion of the demand of this respondent in said action was for bringing from Detroit, on a steamer called the "Detroit," a party of men whom the said defendant (the said libellant) had sent to assist in saving the engine and goods of the wreck of the steamboat "Belle," and in transporting the same men, with the engine and goods, afterwards from the Georgian bay to the Sault Ste. Marie, at the request of the defendant (the said libellant.) That the said services were rendered while the said Detroit was employed under said articles. That the said libellant appeared in said suit and resisted the said claim in the said cause, on the ground that the said articles constituted the said libellant a partner with this respondent, and they were, therefore, interested as partners in the earnings of said boat; and such proceedings were afterwards had in said cause, that afterwards, to wit, on the 29th day of June, A. D. 1854, it was held and decided in said court by final judgment of the court of Queen's Bench for Upper Canada, that the said articles of agreement render this respondent and the said libellant, together with the late Samuel Ward, partners in the said steamer Detroit, which decision and judgment of the said court now stands unreversed and in full force, and this respondent insists that the said libellant is thereby estopped, and bound from denying said partnership.

Eighth. That this court has no jurisdiction of the matters contained in said libel, the same not being of admiralty and maritime jurisdiction, but being matters accruing under a contract of co-partnership as aforesaid, relative to questions of partnership account, and to damages for the breach of the said articles of co-partnership, and pertain properly to the jurisdiction of courts of common law and in equity, and this respondent prays the same advantage thereof, as if the same were separately and formally pleaded to said libel; wherefore the premises being considered, this respondent prays that this court will pronounce against and dismiss the said libel, and that the libellant may be hence dismissed with costs.

(Signed) CHAS. THOMPSON.

Subscribed and sworn to before me, this 8th day of August, A. D. 1855.

(Signed) WM. J. WATERMAN,
Notary Public, Wayne Co., M.

(Signed) LOTHRUP & DUFFIELD,
Proctors for Respondent.

Copy of articles referred to in foregoing Answer.

Memorandum of an agreement between E. B. & S. Ward, of Detroit, Michigan, of the first part, and Charles Thompson, of Canada West, of the second part, witnesseth: That the said party of the first part agree to allow the party of the second part to run the steamer Detroit between the Sault Ste. Marie and Penetanguishene during the remainder of the sailing season of 1852, and all the year A. D. 1853, in a line with and under the general control and management of the party of the second part, who is to appoint all the officers and crew of said steamer, except the clerk or purser, who is to be under the control of the parties of the first part, and subject to their direction. Said steamer is to be paid for the transportation of the government mails, and for all freights and passengers, the same rates as have heretofore been charged by steamers on the route aforesaid.

The receipts of the said steamer are to be applied as follows:

First. All expenses for crew, fuel, repairs and supplies are to be paid.

Secondly. The cost of insuring said steamer, to the amount of twelve thousand dollars, to be paid by E. B. & S. Ward.

Thirdly. E. B. & S. Ward are to be paid out of the first net earnings of said steamer, $6,000.

Fourthly. All the remaining balance, after paying the above, is to be equally divided between E. B. & S. Ward and Charles Thompson aforesaid. The clerk of said boat will be required to make reports as often as once in two weeks of the receipts and expenditures of said steamer, and furnish the said Thompson and Wards each a copy. The said Thompson is to be paid three hundred dollars per year out of the earnings of said boat for his services as agent for said steamer. Should the said steamer be damaged by any accident or require repairs, such expenses are to be paid for by said steamer out of her own earnings, the same as for supplies. It is further agreed and understood, that the said Charles Thompson is to protect, defend, and guarantee said steamer against any and all infringements of the revenue law of the United States or Great Britain. The said steamer is to be returned and delivered unto the said parties of the first part on the first day of December, 1853, at Detroit, in the same condition (ordinary wear and tear excepted) as she is now in. Should the said steamer be lost before she shall have earned the above sum of six thousand dollars to be paid to the said E. B. & S. Ward, said Thompson is not to be held liable to pay any part thereof, but the said Thompson shall be held responsible for the negligence, misconduct, or wilful mismanagement of the said steamer by the officers under his control and management. In case of any partial loss, for which insurance would be paid, such insurance, when collected, shall be applied to the repairs aforesaid. The said Thompson agrees to furnish good merchantable wood for said steamer during the time she may be running in

his service at $1 per cord, the best of hard wood, if full four feet long, to be one dollar and twelve and ½ cents per cord.

(Signed) E. B. WARD, [L. S.]
(Signed) S. WARD, [L. S.]
(Signed) CHAS. THOMPSON. [L. S.]

Signed, sealed and delivered, this 10th day of June, A. D. 1852.

Witness, (Signed) ALEX. M. MCGREGOR.

Memorandum. The Detroit is to be delivered as soon as she returns from Buffalo on her present trip.

(Signed) E. B. WARD.

Amendments to Answer. Filed Aug. 10, 1855.

To the Hon. Ross Wilkins, judge of the district court of the United States for the district of Michigan:

Amendments made by leave of the court to the answer and exceptions of Charles Thompson, of Toronto, in Canada West, to the libel of Eber B. Ward, survivor of himself and Samuel Ward, owners of the steamboat Detroit, in a cause of contract, civil and maritime, allege as follows: That protesting that the charge of false representations in said libel, alleged to have been made by the respondent, touching the value of said route, is wholly untrue and unfounded, yet the respondent excepts and says:

First. That the said matter is improperly joined in the said libel, with cause of contract, and that the said libel is thereby made bad and fatally erroneous, and this respondent prays the same advantage thereof as if the same were separately and formally pleaded to said libel.

Secondly. That the court has no jurisdiction of the said matter of alleged false representations, the same not being of admiralty and maritime jurisdiction, and this respondent prays the same advantage thereof as if the same were separately and formally pleaded to the said libel; wherefore he prays that said libel may be dismissed with costs.

(Signed) CHAS. THOMPSON.

Sworn to and subscribed, this 9th day of August, 1855, before me.

(Signed) WM. D. WILKINS,
Clerk U. S. Dist. Court, Mich. District.

(Signed) LOTHROP & DUFFIELD,
Proctors for Def't.

Further amended Answer of Respondent. Filed Mar. 10, 1856.

In the District Court of the United States for the district of Michigan. In admiralty.

The further and amended answer of Charles Thompson, re-

spondent, to the libel of Eber B. Ward, libellant. And now comes the said Charles Thompson, of Toronto, Canada West, and submitting further to answer to the libel of the said Eber B. Ward, against him the said Charles Thompson doth allege as follows, to wit:

First. As to so much of said fourth article of said libel as charges that this respondent did not use said boat as he had agreed to do, but employed her as a trading boat, this respondent in the first place insists and protests, that by the articles of agreement entered into between the said Wards and the said respondent, the said steamboat was to be run between the Sault Ste. Marie and Penetanguishene, under the sole control and management of this respondent, and that he had a perfect right to so use and employ said boat in running on said route as would in his judgment best subserve the interest of all concerned, and he avers that he did at all times, while said boat was in his hands, in entire good faith, run, control and manage said boat, as in his judgment he thought was for the best interest of the Wards and respondent; but in the second place this respondent further says, that though he is not sure that he understands what is meant by the term "trading boat," yet supposing that the libellant means to charge that this respondent directed said boat from its customary use as a freight and passenger boat, and used it as a depot and storehouse of goods, which he sold and peddled from said boat, stopping and tarrying from place to place for that purpose, this respondent denies that said charge is true, and he avers that said boat was, during all the time while in the hands of respondent, run and used as a freight and passenger boat on the route aforesaid, and in the manner contemplated by said articles of agreement, and this respondent denies that said boat was used in any other way than according to the usual and customary course of such business on said route.

Second. That as to so much of said fourth article of said libel as charges that this respondent, instead of using the said boat for the benefit of all concerned and paying the earnings to the clerk of said boat, he used it for the benefit of himself, in that he used said boat for paying a large amount of his private debts, and in that he received large sums of money from the British or Canadian government, or from other sources, and did not account for the same, as he was bound to do, for the clerk of said boat. This respondent denies that said charge is true; he denies that he used any of the earnings or receipts of said boat during the time she was in his hands, in the payment of any of his debts, other than such as were incurred as expenses for the crew, fuel, repairs and supplies of said boat; and he avers that all of the earnings of the boat received by him during the time last aforesaid were paid over to said clerk of said boat; that respondent has been obliged to pay out of his own private means other debts contracted on behalf of

said boat while running as aforesaid, leaving the said boat largely indebted to this respondent, and this respondent believes that the clerk of said boat paid to said libellant a considerable amount of said earnings of said boat, to the manifest wrong of this respondent; and that, to the best of this respondent's belief and recollection, the only money he ever received out of the earnings of the said boat was a small sum received from the Post Office Department, long after the boat was fraudulently taken out of the respondents' possession, being at the rate of fifty dollars for each double trip.

Third. That all and singular the premises are true: Wherefore this respondent prays that this honorable court will pronounce against the demand of said libellant in his said libel set forth, with costs.

(Signed) CHARLES THOMPSON.

Sworn before me at Toronto, this sixth day of March, A. D. 1856.

(Signed) JOHN BEVERLY ROBINSON,
Mayor of the City of Toronto.

To all to whom these presents shall come:

I, John Beverly Robinson, mayor of the city of Toronto, do certify and declare that Charles Thompson, the respondent in the annexed answer named, was sworn to the truth of the said annexed answer upon the Holy Evangelists of Almighty God, and that he subscribed the same in my presence, the sixth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

In truth and testimony whereof I have hereunto affixed the seal of office of mayor of the city of Toronto, this sixth day of March, in the year of our Lord one thousand eight hundred and fifty-six.

(Signed) J. BEVERLEY ROBINSON,
Mayor, &c.
A. S. McCORK, *Chamberlain.*

{ Seal of the City of Toronto. }

Libellants' Exceptions and Replication to Answer. Filed 18 Aug., 1855.

In the District Court of the U. S. for the district of Michigan.

EBER B. WARD, Survivor, &c.
vs.
CHARLES THOMPSON.

Exceptions and Replication of the Libellant to the original and amended answers of the said Respondent to the libel filed in this cause.

First exception. That the respondent has not well and sufficiently met the charge in said libel, contained in article ; that

the respondent and the said steamboat Detroit, as a trading boat, in this, that the respondent does not admit the charge or deny it, but answers in an evasive manner, by denying, merely, that he did not use said boat other than he had a right to do.

Second exception. That the respondent has not well and sufficiently answered the article of said libel, which charges said respondent with a misapplication of the incomes and earnings of the said boat; the said answer is evasive and argumentative, in the same manner as set forth in the first exception.

Third exception. That the fifth article of the respondent's answer is irrelevant and impertinent in this, that it sets forth, as a defence in this cause, a certain alleged and pretended tort or trespass committed against the respondent by a third person, who is alleged to be not the servant or agent of the libellant, but a public officer of the Government; which allegations, if true, are no defence in this cause.

Fourth exception. That the said respondent, in the said fifth article of his answer, sets up acts on the part of this libellant which, if true, (and this libellant denies that they are true) afford no ground of defence to the respondent in this cause.

Fifth exception. That the allegations in said fifth article of said answer are vague, indefinite and inconclusive. No amount of damage to the respondent by the pretended acts of the libellant is specified, and the said article is in other respects insufficient and defective. Wherefore the libellant prays that the said fifth and also the sixth articles of said answer be stricken out; and that as to the charges aforesaid, of using the said boat as a trading boat and of misapplying said funds and earnings, the respondent may be required to answer the same fully, or the same be taken as confessed. And the libellant insisting upon said exceptions, saith, by way of replication to the remaining portions of said answer not excepted to—

First. That he denies that he is indebted to said respondent in any sum whatever.

Second. That he admits the written agreement set forth in said answer was entered into by him and Samuel Ward on the one part, and the respondent on the other, and that no other agreement was ever entered into between said parties.

Third. But the libellant denies that the said agreement can or ought to be considered as articles of copartnership between the parties thereto. He insists that the same was and is but an agreement to charter the said steamboat for a fixed time, at a rate of wages to be ascertained in a specified mode.

Fourth. He denies that it was held and decided by the court of Queen's Bench of Upper Canada as is alleged in said answer, and insists that even if it were so held, the libellant is not thereby estopped from denying the same in this cause.

Fifth. The libellant denies that the matters involved in this suit are matters relating to partnership account; and even if they were, the libellant insists that they relate strictly to maritime contracts, and are, for that reason, within the jurisdiction of this court.

Sixth. In reply to the said amended answer, the libellant admits and confesses that the charge in his said libel of fraud and fraudulent representations against said respondent, set up a matter which is not within the jurisdiction of this court, and he therefore prays to be allowed to amend his said libel, by striking out that portion thereof; and as to the other matters in said libel contained, not hereinbefore excepted or replied to, the libellant saith that he will aver and maintain the same to be true, certain and sufficient, and he humbly prays as in his said libel he has already prayed.

(Signed) HUNT & NEWBERRY,
Proctors for Libellant.

Depositions on behalf of the Libellant.

Thomas C. Robinson. Sworn Dec. 19, 1856.

That he resides in Canada. That he knew the steamer Detroit in the year 1852. That he was a clerk on board of said steamer in the route from Sturgeon Bay, Canada, to the Sault Ste Marie. That Capt'n McGregor was then master, and —— Wilson acting engineer. Commenced running on that route about the 20th of June, 1852. The usual time of making trip around was eight days. Said steamer made fifteen trips round during that season up to the time that the custom-house officer, O. M. Hyde, came after her and seized said steamer. We carried the British mail on said route and trip. Said steamer never received anything for carrying said mail. The deponent kept the account with Charles Thompson. That he has the book containing said account now. That "Schedule A" produced is an accurate copy of the said Charles Thompson's account from said book. That the balance due to said vessel on said account is eight hundred and twenty-two $\frac{23}{100}$ dollars, which does not include the amount received by the said Thompson for carrying said mail. That said amount contains charges for passengers' fare, freight, cash paid, and money accounts settled. That after said steamer was seized by said O. M. Hyde, collector, the steamer Telegraph was sent on said route to carry said mail for the same purpose as the said Detroit by Captain Eber B. Ward, and that this deponent went on board as clerk. That said Telegraph made two round trips on said route, and that said Telegraph continued running to the close of navigation. (The account of Charles Thompson, as appears by "Schedule A" and the testimony concerning steamboat Telegraph, taken subject to exception.) The cash items charged against Charles Thompson were actually paid to him from the proceeds of said steamboat Detroit by his verbal order; all the

other charges made against said Thompson on said account were made by his verbal order. That the item charged as McIntosh's account for $190 58 were for consigned tickets, and that said Thompson said McIntosh was his agent, and told witness that the said tickets were all right, and that he should take them. That the item charged "Montreal Mining Company's account," $140 27, was for freight and charges on merchandise, and that said Thompson had advances from said company, and was to repay them in freight, and that witness was to charge said balance to said Thompson. Deponent further says that the total amount of cash remitted to Cap'n E. B. Ward, over and above the current expenses of said Detroit during the time of her running on said route, was fifteen hundred and twenty $\frac{80}{100}$ dollars. During the running of said Detroit nothing was paid by this deponent for insurance or outfit. There was no second engineer on board said Detroit during her said trips. Said steamer ran on said trips night and day. That said engineer often went to sleep and left said engine in charge of his fireman. That said engineer had a room for himself on board said boat in which he kept a general assortment of dry goods, and sold the same at the various ports between the two ends of said route on his own account. That he was in the habit of getting off of said steamer at Sturgeon Bay, going into the interior for the purpose of purchasing butter, eggs, flour, &c., and that the said steamer was kept waiting for said engineer at various times, and that he was in the habit of keeping said steamer waiting at the Sault Ste. Marie for the purpose of settling up charges for his own sales of said goods. That the said engineer was in the habit of leaving the engine of said steamer while at the Bruce mine with high steam, without any competent person being in charge of it, at various times during trips of said steamer, and going to his said room for the purpose of selling his said goods. And this deponent further says that he reported the conduct of said engineer at various times to Cap'n McGregor and said Charles Thompson, as follows. That this deponent did not think him a safe man for the engine, as he had too much other private business of his own to attend to; and that they replied that they would not discharge him, as he was an important witness in a suit between Charles Thompson and Cap'n Sandpeck, and that they wanted to keep him on the said steamer until said suit was determined. And this deponent further says that said engineer was in the habit of purchasing goods on the Canada side and selling them on the American side, and vice versa. It was this deponent's duty to make out the reports of said vessel's manifest for the custom-house on the American and Canadian side, and obtain the master's signature. That the said engineer did not report to this deponent concerning the goods which he purchased and sold on either the American or Canadian side during said trips. That this deponent often asked said engineer for

a report of his said purchases and sales, and that he replied to this deponent that it was none of this deponent's business. And this deponent further says, that after the said vessel reached the Sault Ste. Marie, some time about the 30th August, 1852, the coals, brands and ashes, which were drawn from out of the boiler of said vessel, were permitted to remain in front of the boilers on the ceiling, instead of being secured or thrown overboard, in consequence of which said steamer took fire and was much burnt. And this deponent further states that no one else on board said vessel was in the habit of speculating like the said engineer except the saloon-keeper, who purchased provisions for and on account of said vessel, who always reported the same to this deponent. And this deponent further saith that Walter Thompson, acting as second mate, was sometimes left in charge of said steamer during the day-time on said trips. That the crew of said steamer were paid in full for all claims against said vessel except the captain, to whom was paid $278 25, but does not know whether this was in full or not.

Respondent's attorney excepts to all the above testimony referring to said Wilson's conduct off said vessel, to all testimony having reference to his trading on the boat, and to all testimony affecting his conduct as engineer, except as to the fire at the Sault Ste. Marie.

Cross-examined.

Witness was clerk on board during the running on said route; that during said route said boat ran from Sturgeon Bay, one terminus, and Sault Ste. Marie, the other. After said boat was seized he was in the employ of Capt. E. B. Ward, on steamer Telegraph, which ran on said route; said steamer belonged to said Ward; witness is not and has not been in the employ of said Capt. Ward since the close of navigation, 1852. The book which was referred to was the ledger; witness posted said ledger. After said vessel was seized witness kept possession of said books until close of navigation, and then delivered them to Capt. E. B. Ward, and where they have been ever since, as far as he knows. Said "Schedule A" is not a literal transcript from the original entries; it is a literal transcript of each separate charge as far as the amount in money is concerned. In the entries for passage charges, they were done by the verbal order of Capt'n Thompson, or written order in some cases; cannot distinguish the entries made by virtue of any written order. Where freight is charged in said account it was by the verbal order of said Thompson. Witness kept the account of the earnings of said vessel, and paid expenses of said vessel; witness paid Capt. Ward the net earnings of said steamer; the last payment to Capt. Ward of $150 was the balance in his hands of the net earnings of said boat on said route; the payment made by me of the earnings of said boat to Capt. Ward were as follows:

1852. July 6	$300		1852. Aug. 23	$200	
23d	220		30	100	
Aug. 9	200		Sept. 28	300	80
18	200		Oct. 15	100	00

The above being less $100 paid witness by Ward for boat. The trading of the saloon-keeper was done on account of the boat, and with the knowledge and approbation of witness, and according to the usual business of the saloon. The said engineer sometimes slept in his engine-room (while the boat was on her trips) while on watch, and I have seen him go to his private room, but cannot say how long he stayed there; have seen him taking naps at different times as I was passing the engine-room; never spoke to him while asleep; knew he was asleep from the fact that his eyes were closed; never was in his private room; have seen the engine while under way in charge of a fireman by the name of Edward McCay, and James Robinson, and Henry Abinck, and James Marien, who were in the engine-room; saw these men as I passed by the engine-room; during every trip saw the said firemen at various times have charge of said engine as aforesaid. Cannot tell the value of goods on board said steamer belonging to and received by said engineer, but have seen bales, boxes, and barrels kept at various times in his possession on said boat. On day of the fire, at the Sault Ste. Marie, we arrived there during the day—thinks it was in the afternoon; was not in the fire hold during the day of said fire, but could see down from the deck all that he wanted to see; cannot say that he looked down the fire hold during the day that the fire occurred. There was a hearth either of brick or iron in front of the boiler. Know nothing in particular of the movements of the said Wilson on the day of the arrival at the Sault Ste. Marie; witness was on as good terms with the said Wilson as he was with any one else.

Re-examined by Mr. Newberry for Libellant.

Witness was in the fire hold after the said fire at the Sault; went to ascertain how the fire originated; saw a large pile of ashes, brands, or cinders off one side of the boiler, against the ceiling, and near the wood.

Question by Mr. Newberry. In your opinion, how did the fire on board said steamer, at the Sault Ste. Marie, originate?

(Objected to.)

Answer. From the said ashes, brands, and cinders.

Re-examined by Mr. Lothrop for Claimant.

When witness went down the fire hold, after the fire, the pile of ashes that he saw was on the right-hand side, in front of the boiler; can't say whether they were on the fire hearth or not; if they were off they would be on the floor of the vessel; when I went down the ashes touched the wood; the wood had been thrown out

of the hold before I went down, and none after I came out of the hold; can't say who went into the fire hold just after the fire, and don't know whether I went down first; witness did not go down until next morning after the fire (after day-light).

(Signed) THOS. C. ROBINSON.

Sworn to and subscribed before me this 18th December, A. D. 1856.

(Signed) H. JEWAIN, JR.,
Comm'r U. S. Cir. Court, Dist. of Michigan.

"Schedule A," attached to the foregoing Deposition.

Mr. Charles Thompson to Steamer Detroit, Dr.

1852.			
June 18.	To amount paid A. Johnson		$13 27
20.	" J. Wilson		10 00
"	By 8 cords wood	$8 00	
"	4¾ " "	4 75	
"	J. Richmond	5 00	
"	Capt. Keating	5 00	
22.	cash	34 87	
26.	To freight act		2 00
"	cash		27 62
"	By 4½ cords wood	4 50	
"	M. G. Payment	30 00	
"	Shioh-woa-konce	35 00	
28.	4¾ cords wood	4 75	
"	To freight act		1 50
"	passenger act		18 00
30.	" "		8 00
"	freight		1 00
"	passage Mr. Queen and lady		10 00
"	" Armstrong		5 00
"	cash		15 17
July 1.	"		214 87
5.	By 5¼ cords wood	5 25	
7.	4¾ " "	4 75	
"	J. Marks	5 00	
"	J. Wilson	5 00	
"	To freight act		2 00
9.	" "		1 00
10.	cash		3 75
12.	passage Mr. Chambers		3 00
"	" Mr. McNabb		2 50
"	p'd Mr. Lufferty		8 00
"	freight act		1 00
"	Stephens & Brothers		16 00

Schedule A—Continued.

1852.			
July 12.	By Walter Thompson	$5 00	
15.	4½ cords wood	4 50	
17.	To freight act		$14 00
21.	By Shing-woa-konce	5 00	
23.	To passage Mrs. Appleton and children		14 00
25.	By B. Lorange	5 00	
"	To freight act		3 00
30.	passage Mr. McNabb		8 00
Aug. 10.	" C. Broner		8 00
16.	" Davis & Son		12 00
18.	freight act		4 00
25.	3½ cords wood	3 50	
28.	By freight act		12 00
31.	"		45 83
"	cash		8 00
"	"	5 50	
Sept. 1.	Mr. Bruhanan		4 00
10.	To "		8 00
15.	J. Richmond	10 00	
18.	By freight act		1 50
23.	To passage to Soo and back		18 00
29.	cash		10 23
Oct. 5.	passage Nicholson and family		32 00
	freight		10 00
"	" act		20 00
"	passage of boy Vulton to Sturgeon		5 00
"	saloon act		21 37
"	passage Mr. Pym to Soo and back		8 00
"	A. McIntosh		190 50
"	B. C. Montreal Mining Co. act		140 27
"	James Walker		12 75
"	Geo. Dwisides		27 67
"	paid Mr. Fraser		15 00
"	Balance down	822 23	
		1,012 60	1,012 60
	Balance as per ledger		822 23

17 trips round carrying mail.

Depositions on behalf of the Claimant.

Walter Thompson. Sworn Aug. 9, 1855.

I reside in Toronto, Canada West. Have been sailing for the last four years. Know the defendant in this suit; did konw the steamer Detroit. Knew the Detroit during the time she was employed between the Sault Ste. Marie and Penetanguishene; that is, I met on her first trip after she was employed on said route in the year 1852. Was employed on her in the capacity of 2d mate during the time that she ran on this route. When I met her she had not commenced her regular trips between the Sault and Penetanguishene. My service commenced about that time from Cape Croker, and I continued on her until she had left that route, as her 2d mate. Alex'r M. McGregor was her master during this time, and Rob't Curry was her 2d mate. John Wilson was her engineer, and Thomas Robinson was her clerk. During this time the Detroit had about 16 or 18 (perhaps 19) hands, including officers, employed on her, aside from the clerk. I cannot tell by whom these officers and men were employed. I was employed by the captain. I understood that the clerk was employed by the Messrs. Ward. I know Capt. McGregor, and had known him about a year before he went in the Detroit. He seemed to me to be well qualified as master of the Detroit; but I am no judge of seamen. During the time that I served upon her, the Detroit was properly officered and manned. Her route was, on leaving Sturgeon bay she touched at Penetanguishene; sometimes at McClaren's Point; sometimes at Lee; at Sydenham, (then so called, but now called Queen's Sound;) sometimes at Chebon-on-ing; at Manito-on-ing; sometimes at Kosh-ka-woa-ing, at Bruce Mine, at Kilton, at Garden river, and at Sault Ste. Marie. She made on an average one trip per week, up and down, on this route. She was engaged principally in carrying cattle, but generally in carrying freight and passengers. I was at Sault Ste. Marie on one occasion, when the Detroit took fire. Don't remember the date. It was in 1852. It was between 10 and 11 p. m.; I was on board of the boat at the time, and on watch. The boat had been at the wharf since between 1 and 2 in the afternoon after her arrival. After the time of her arrival and before the fire, the boat had been moved once, creating a necessity for keeping steam on. Her steam was kept on her until about 4 o'clock p. m. This fire when it was first discovered was blazing out of the forward hatch. I threw the first buckets upon it. The fire was coming from forward of the engine-room; was not able to tell in what the fire took. The fire was very soon put out, as far as I could judge. It was below the main deck. I examined the vessel after the fire was put out, and saw what the effect was; it was nothing more than a scorch as far as I could see, about 30 or 40 feet square. Some repairs had to be made upon the decks where they had cut through in quench-

ing the fire. The fire did not burn through the deck at any place that I know of. It did not burn through any of the timbers of the deck, so as to necessitate their being taken out. The general effect of the fire was to blacken and scorch her around a space of about 30 feet. Am not able to tell where the fire originated. The fire did not cause any damage to the Detroit's machinery, within my knowledge. We were able to proceed on our trips after a very short delay in pumping out water, and making a few trifling repairs—no material delay. The Detroit was taken off that route some time in September, 1852. She was taken by O. M. Hyde, of Detroit. He came up himself, as I understood, though I didn't know him. He represented himself as a revenue officer of the United States. She was at Sault Ste. Marie when seized. He didn't state any other reason when he seized her, except that he did it as an officer of the United States, for a violation of the revenue laws thereof. Capt. Burtch, and the mate of the steamboat London, were with him when he seized her. He had with him a force to take possession of the Detroit; cannot tell how many; a half a dozen or more. The engineer of the Detroit, before she came on to that route, was one of them. I left the boat at Sault Ste. Marie. He took her away therefrom, from the care of Capt. McGregor and his officers. Hyde was asked at the time he seized her, what the alleged violation of the revenue law was; Capt. McGregor asked him. He would not tell what it was, but said it would be brought forward in Detroit. There was no violation of the U. S. revenue laws, within my knowledge, committed on the Detroit while I was on her. I kept strict watch to see that nothing of the kind took place. Knew the engineer of the Detroit, while I was on her. He had, to my knowledge, been employed three or four years on steamboats before I went on his.

Question. Do you know what the reputation of this man as an engineer was among steamboat men?

Answer. Some would run him down, and others would praise him. So far as I know, he was well qualified.

Cross-examination.

Am aged about 23 years; was 23 last February. First commenced sailing about August, in 1851. Went on board the Detroit in the spring of 1852, as her 2d mate. In 1851, I was not under pay as a sailor. I was merely cruising about on a schooner to learn something. Was about 19 years old when I went in the schooner, and in my 20th year when I went on the Detroit. I did not consider myself as a seaman at all. I was acquainted with part of the route she ran on. Did not know at the time I went on to the Detroit how to "box the compass." I know now how to "box the compass." Learned how to box the compass while on the Detroit. Never steered with a steer-

ing-wheel before I went on the Detroit, except that I had used a wheel on the Gore, but cannot tell how long I used it. Was not acquainted with the duties incumbent on an officer of a steamboat at the time I went on the Detroit as 2d mate. The captain was generally with me when I was on watch on the Detroit. He was not always with me; but when absent, was where I could call him. Her route in some places was a pretty rugged, rocky, ugly country to run through. I was acquainted with the Detroit route from the head of St. Joseph's to the Bruce mine, and from thence to Kars-che-roong. I had been 10 or 12 times on that route before I went on to the Detroit, on the steamboat Gore—before I went on to the schooner. Did not act as a pilot on the Gore when I was on board of her, nor did I stand as a night-watch on her. Was not employed on the Gore. There were three men who were good pilots on the Detroit while I was on her; that is, three men who knew the way through there. I am the son of Charles Thompson, defendant in this suit. Am not interested in the event of this suit.

The distance from Penetanguishene by the route which we went to the Sault, was about 330 or 340 miles. When the Detroit was on the road she ran night and day until she got through. We were usually in making one run from Penetanguishene to the Sault, about 30 or 40 hours running time, not including the stoppages. Sometimes she would stop 15 minutes, and sometimes 2 or 3 hours. She had regular days of starting from each end of the route. The Detroit carried a captain, 2 mates, 3 wheelsmen, 2 engineers, and sometimes 3, sometimes 4 firemen, generally 3 deck-hands, 2 cooks, a steward and a porter. Don't remember how many firemen she had on board when she took fire. Our 2d engineer's name was Duncan Norris. Don't know as an actual fact, that there was a 2d engineer on the boat the whole of the time I was aboard, but I understood that there was. A man of the name of David Pym had charge of the saloon on the Detroit. The engineer was generally on board and attending to the engine when the vessel was at port.

Believe, on the Detroit they fired at the forward end of the boiler. The flames came up through the hatch where they usually threw the wood down. Don't know much about the Detroit's works below. Used frequently to go below at night. Can't say how long it was after I had first seen the flames before the fire was put out. Believe the engineers were aboard when the fire broke out. Mr. Wilson, the first engineer, gave the first alarm. Believe the captain at the time was at the Van Anden House. Cannot tell what it was that was on fire below. Didn't see anything below to tell what was burning. Never made any examination to see how deeply the timbers or planks were burned in by cutting or boring in. There was no watch kept on the boat by the firemen

or engineers as a fire watch in the night while in port. The men who ran down the engineer said he was a "hard case," or "hard man." He seldom touched liquor, as far as I could see. Have seen the captain of the boat angry sometimes at the engineer for blowing off steam and waiting. From Mr. Pym, who kept the saloon, I understand that the saloon profits were turned into the office.

(Signed) WALTER THOMPSON.

Sworn and subscribed before me this 9th day of August, A. D. 1855.

(Signed) WM. D. WILKINS,
U. S. Com'r 7th Cir't and Dist. of Michigan.

Robert Curry. Sworn Aug. 9, 1855.

Am aged about 40 years. Have been a sailor for 30 years. Have been 20 years on the lakes, and previously on the ocean. Knew the steamer Detroit. Was employed on her during the time she ran, in the year 1852, from Penetanguishene to Sault Ste. Marie, as mate and pilot. Was on her as mate and pilot all the time she was running on that route. Capt. McGregor was her master during this time. Had known him for 10 years. Consider him a good seaman, competent to command the Detroit. The boat, while she ran on this route, was properly manned, in my judgment. She had a 1st engineer, named Wilson, who continued all the time she was on the route; and a second engineer, who was on a part of the time, and then left, and was succeeded by another: so that at all times we had a 1st and a 2d engineer. Have known Mr. Wilson about 14 years, during all of which time he has been an engineer on steamers, except one year. He was a pretty good engineer. While running the Detroit on this route we had no accident to the engine or to the boat. Remember the occasion of the fire on the Detroit at the Sault Ste. Marie. Was on the boat that night at that time. It occurred at about ½ past 10 p. m. I saw the smoke first coming up from the fore hatch, where they throw the wood down. The fire was soon extinguished. Cannot say for certain how the fire took, but suspect it was from wood taken out of the furnaces on to the fire hearth. The decks being old, and the oakum hanging down loose from the deck, some of it may have dropped down and caught. The fire did not hurt the vessel much. It scorched the vessel below, but did not hurt her beams a bit. It scorched about 4 feet of the beams pretty black, but did not burn them so as to injure their strength. The fire was confined below. It is customary on steamboats, when they let the steam go down, and there is too much wood or fire in, to draw the brands out on the hearth, and to dampen it down there. At the time of the fire on the Detroit, either Edw'd McKay or Duncan Morrison was 2d engineer. I think it was Morrison.

The Detroit was running all the time between Penetanguishene and the Sault, in the freight and passenger business. Mr. Hyde, of Detroit, took her away from Sault Ste. Marie. He came with a force, and took her away from Capt. McGregor's possession. Mr. Hyde pretended that he was a revenue officer, and took her for a violation of the U. S. revenue laws. Hyde took her away against the will of Capt. McGregor. It was late in the fall of 1852, about the 1st of October. Do not know of any violation of the revenue laws by the steamer Detroit while I was upon her. $30 or $40 would make the damage to the Detroit as good as it was before. Do not know of any injury her engine received at any time while I was on her. I came down on the Detroit when Collector Hyde came down on her. He put about half a load on her at the Sault and brought it to Detroit. That load was not put on her by Capt. McGregor, or any one in Thompson's employ, but by Capt'n Burtch, who brought her down to Detroit. Capt. Burtch was in the Messrs. Wards' employment, both before and afterwards. Immediately after she got here she was loaded again. Mr. Robinson, Capt. Ward's clerk, checked the goods on her, and she went back to the Sault. After this, I went up as pilot on the Telegraph, one of Ward's boats, which went on the route of the Detroit which she had left, and was run on that route the rest of the season by the Wards on their own account. The rest of the season the Detroit run from Detroit to the Sault. I saw her twice at the Sault after that. After she was brought to Detroit by Hyde she laid here about two nights and days before she went back. Ward's engineer, who brought the Detroit to the Sault, when Ward delivered her to Thompson, took possession of her as engineer when Hyde seized her, took her down to Detroit, and brought her back to the Sault. Captain Burtch was master of the Detroit when she was delivered to Thompson.

Cross-examination.

On the down trip of the Detroit from the Sault, and while in Hyde's custody, she had a little load of fish on board and some passengers' baggage. I helped unload the Detroit after we got down here. I was in Detroit four days, between my arrival at Detroit in the Detroit and my leaving there in the Telegraph. When Mr. Walter Thompson came on board the Detroit I did not consider him a competent man to keep watch as 2d mate only on one part of the route.

There were a lot of fire-brands before the furnace on the hearth, in front of the boiler, when we put the fire out. Could not see where the fire could have taken, unless where the brands were hauled out.

Out of the 20 years I have been on the lakes I have been about 14 years on a steamboat.

Never heard Capt. McGregor complain of the negligence of his engineer. Never knew of the engineer trading or trafficking in the Detroit and saloon. Never saw him in liquor. He owned a grist mill. Have known him to take on and carry butter (1 or 2 firkins) and flour of his own from his mill, (20 or 30 barrels at a time,) and sell it at other ports on the route; but he always paid freight. Once he took his cattle from his farm up on the Detroit to the Sault, and sold them there, but he paid freight on them. Have known of his taking up one or two dead hogs. Never knew of his trafficking in dry goods or merchandise. He sold his pork, flour, &c., at the Bruce mine. His mill was 9 miles from Owen's sound, and three miles back from the lake. Don't suppose he went home over once while he was on the Detroit.

Question. What were Mr. Thompson's wages while he was on the Detroit? (Taken subject to objection of claim'ts proctor.)

Answer. I don't know what he was to get, but he didn't get anything from the Detroit.

When we had but two firemen on the Detroit (which frequently occurred) the engineer and 2d engineer had to assist in firing. Firemen often desert from steamers on that route, and it is often impossible to replace them.

Re-examined in chief.

When the fire-brands were hauled out from the furnaces, it appeared to be properly damped down and cleared up round there, but I cannot see any other way in which the fire caught except from there.

(Signed) ROBERT CURRIE.

Sworn and subscribed before me on this 9th day of August, A. D. 1855.

(Signed) WM. D. WILKINS,
U. S. Com'r Cir. C't U. S., Dist. Michigan.

Alex'r M. McGregor. Sworn March 12, 1856.

I am by occupation a master mariner. That has been my business since I was 13 years of age. During that time I have been serving principally on all the great lakes in all capacities, both on sail and on steam vessels; have served on steamers for 5 years; have served as master since 1843. I am acquainted with the route from Sault Ste. Marie, in Michigan, to Penetanguishene, in Canada. First went on that route in 1844. From 1844 to 1849 I sailed on that route in a sailing craft, and since that time I have been there, more or less, every year. I commanded a steamer on that route a season, and part of another, before the Detroit went there. The steamer I commanded was the Gore.

I know the steamer Detroit; I was present when the arrangement was made between Capt. Ward and Mr. Thompson to run the Detroit on that route, and witnessed the agreement between

them; think this was in 1852. The steamer Detroit was delivered to Mr. Thompson under the agreement the same day, I think, on which the agreement was made. I was on that day placed in command of the Detroit as her master. The Detroit immediately took on a load, and proceeded first to the wreck of the steamer Belle, landing a crew for the Belle and some stuff, and then proceeded to Sault Ste. Mary. The Belle was a steamer which had been wrecked on that route before the Detroit went there. I continued master of the Detroit until she was seized by collector O. M. Hyde. I was with the boat as actual master on every trip; think I was on her all the time.

Mr. Curry was the Detroit's mate; Mr. Wilson engineer; McIntosh and Reed were wheelsmen; I always kept the first watch myself; after the first month, or thereabouts, Mr. Thompson acted as 2d mate, but on the watch he was on I always acted myself; in thick weather or in intricate passages I always kept both watches myself. We had a sufficient complement of seamen, engineers and firemen, at all times, to work the vessel properly and as she ought to be.

Mr. Wilson was a good engineer. (Libellant's proctor objects to proof of Wilson's capacity as an engineer from this witness. Further testimony on this head taken subject to such objection.) I have known Mr. Wilson for 10 or 11 years. His occupation during all that time has been that of an engineer. He was engineer on the "City of Toronto," a large steamer on Lake Ontario, when I first met him. He had been employed as engineer in responsible places on valuable steamers on Lake Ontario for many years; never heard any objection to his skill as an engineer.

Question. What was his general reputation for skill and capacity as an engineer. (Objected to by libellant's proctor as incompetent, and answer taken subject to such objection.)

Answer. I have always heard that he was a good engineer, and he could always get a good boat when he wanted one; as far as I knew he was a sober man; never saw him drunk in my life. His habits of attention to his business were generally very good. I objected once or twice to his trading at the Bruce mines; this was the only objection I ever had to him—cannot say positively whether it was him or the steward; never had a more attentive man at his engine in my life outside, in the lake, or at any other time, except on those two occasions to which I refer. At the Bruce mines, on one or two occasions, people came on board in such numbers as to obstruct the passage on the boat. I thought they were trading with the steward or the engineer, and on the second occasion I objected to it, and it never occurred again.

Knew Mr. Curry, my first mate, for 9 or 10 years. He is a first-rate seaman, and a good officer; no one can find fault with him. I

was well acquainted with the business, and the mode of doing it, on this route, before the Detroit was put on there.

Question. Was the business and the mode of business done by the Detroit while she was there different in any respect—and if so, in what—from the business and the mode of business done on that route previous to her being placed on it? (Objected to by libellant's proctor as incompetent and irrelevant.)

Answer. The only difference in the business was, that there was not so much trading done on the Detroit as there had been previously. The whole proceeds of the boat previously were used in the trade, but on the Detroit Mr. Ward got all the spare cash, his clerk sending it down to him.

Question. Will you describe the nature of and the mode of the business done on that route by the steamer "Gore," which preceded the Detroit, as well as on the Detroit herself? (Objected to by libellant's proctor, and answer taken subject to objection.)

Answer. They carried the mail, a good quantity of the Hudson Bay goods, and supplied the upper country with supplies and provisions. We frequently received orders at Sault Ste. Marie to bring supplies to that place, which we were accustomed to buy and to bring to them. Previous to the Detroit's going there it was the custom of the owner of the Gore to use all the earnings of the boat in buying these supplies and transporting them. After the Detroit went there those earnings were cut off from the fact that Mr. Ward received the earnings of the boat from his clerk. We used to do some passenger business as well.

As we carried the mail, we only stopped at the different ports long enough to receive and discharge such freight as we had or were offered, just as the steamers do on Lake Ontario and on other routes. The boat did not carry goods and wait at ports long enough to peddle them off, nor anything of the kind. My subordinates on the boat were not allowed to make her a storehouse, or to carry freight on her without paying for it. They had to pay for all they carried, just the same as strangers.

During this time Mr. Robinson, Capt. Ward's clerk, collected the freight bills; cannot say positively whether Mr. Thompson collected the Hudson Bay Co.'s freight bills or not, but think Robinson collected them. Do not know of any interference by Mr. Thompson, or any one in his employ, with Mr. Robinson in collecting his freight bills. While the Detroit was on that route no accident of navigation ever happened to her. She took fire once at Sault Ste. Marie. It was always a mystery to me how she took fire. We arrived there at about ½ past 3 o'clock. The wood was always thrown out, and the steam generally blown off, and the fires raked out of the grates, and the decks always cleared up at the Sault. The fire broke out between ½ past 8 and 10 o'clock at night. The fire took in the fire hold on the starboard side, forward of the boiler. It appeared to me to be in the wood. There were three or four strips

that were literally burned in the hold. The fire appeared to have taken forward of the hatch. The deck-beam most charred was forward of the hatch; think the engineer discovered the fire. There was a watch kept on the boat. From the time the fire was first discovered it could not have been five minutes until it was all under. There was never anything done to the boat about it afterwards. She kept on running. The oakum and pitch of the main deck by burning charred the edges of the plank so that they could not be caulked, and three or four short pieces were cut out. She was not detained from her regular trips.

The Detroit continued to run there until seized by Mr. Hyde at Sault Ste. Marie. I was on the boat at my meals. Mr. Hyde told me his business, and commenced reading the law to me. He pretended to seize her as collector of the port of Detroit. He had with him a number of men in Mr. Ward's employ. McMullen (an engineer who took her down) was with him. Previous to my seeing him he had removed certain portions of the engine on shore. McMullen had been the Detroit's engineer before I took charge of her. There was also the mate or the 2d mate of the steamer London, and some other men belonging to the London, which was one of Mr. Ward's boats. Mr. Hyde produced no papers when he seized her—nothing but a statute-book, out of which he read what purported to be a law of the U. S. He stated that it had been charged on oath that some persons on the boat had been smuggling, and that he had come upon purpose to seize her; think he stated to me that it was Wilson who had smuggled. He wouldn't tell me who made the complaint. I then applied to him for leave to bond the vessel and give security there, and could have given any amount of security, but he refused, and said he must take her down to Detroit.

McMullen acted as engineer in bringing her down. The other men who came with Hyde assisted in bringing her down. They put some cargo on at the Sault—fish, I think. I know Hyde had control of the boat after he had seized her. I took passage on the London, and came down on her to Detroit, reaching there before the Detroit did. Mr. Hyde, at the Sault, took possession of the office books and everything else on the boat. He refused to let me have the books. He required myself and Curry, Reed, Thompson and Wilson to leave the boat. He allowed Robinson to remain on the boat and come down on her.

I inquired at Detroit for any complaint against the Detroit. Inquired of the United States attorney and the United States district clerk, but could not find out anything about it. I also notified the district attorney that if any complaint was made I was ready to give security for the boat. I also called four times for Mr. Hyde at the custom-house, but could not find him. Two or three mornings after she arrived at Detroit I found them loading the Detroit for the Sault at the M. C. R. Co.'s wharf. The same men, or nearly

the same, who took her at the Sault were then on board of her. The same man who was master of her before she went up on that route (believe his name was Burtch, but am not sure) was then acting as her master. Saw the Detroit leave Detroit for the upper lakes very heavily loaded.

I have no knowledge whatever of any smuggling done on the Detroit by any one whatever on board of her while she was on that route, nor any reason to believe that any such smuggling was done. Do not know of any injury being done to her engine while she was on that route, or of any neglect of the engine by the engineer. Five dollars' worth of paint would have covered the injury by the fire. It didn't injure the boat a bit. At the outside, $10 would have covered the injury done by the fire. The engine was just as good when she was taken away from as when she came on the route, excepting the ordinary wear.

Cross-examination.

Thompson owned the Gore when she was running on the Sault route. The Detroit made a trip from Penetanguishene to the Sault and back once a week. This we call the "double trip," leaving Penetanguishene every Saturday.

Know Wilson's reputation as an engineer. Have heard Captain Thomas Dick speak of his engineering qualities; have also heard Stark speak of it, and Nelson also, another engineer. Never saw him drunk. Have seen him drink. While I was on the Detroit I never traded on my own account.

Wilson was engineer of the Detroit when she took fire. When the alarm was given I was up town. I was there as soon as the bell was tolled. Mr. Wilson was in his room at the time of the alarm of fire. I saw him come out of his room as I went down. I was then about one hundred and twenty feet from the boat.

The London lay the next boat below where the Detroit was. The men from the London who went with Hyde were, I think, the second mate, and I think some of the deck hands. I knew there were four of the London's crew with him. Had previously seen them on the London. Had seen them frequently. Of the others who came with Hyde, some had been on the Detroit previous to my taking charge of her. McMullen was one of them. I think Burtch, the captain of the Detroit before I took command, was also there. Didn't see Hyde take any of the engine ashore.

The damage that required painting was done above the deck. We carried the mail. Don't know what we got per trip. I understood we got something like $50 a trip up and down.

ALEX. M. McGREGOR.

Sworn and subscribed before me this 12th day of March, A. D. 1856.

(Signed) WM. D. WILKINS,
U. S. Com'r Cir. Ct. 7th Cir't and Dist. of Mich.

Decree of Court sustaining jurisdiction.

At a session of the district court of the United States for the district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, in said district, on Monday the fourth day of February, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Hon. Ross Wilkins, district judge.

In Admiralty.

In the matter of the libel and claim of EBER B. WARD, survivor of himself and of SAMUEL WARD, owners of steamer Detroit,
vs.
CHARLES THOMPSON.

The court now delivers judgment upon the motion heretofore made by the defendant in this cause to dismiss the libel therein filed for want of jurisdiction in the court; denying and refusing the said motion, and awarding to the said libellant the taxable costs of this motion, to wit: to Messrs. Hunt & Newberry, libellant's proctors, for arguing a question of law ten dollars, $10; and to William D. Wilkins, clerk of this court, his taxed costs as such clerk on this motion, two dollars, $2; making for the whole of said costs taxable against said defendant on the dismissal of said motion twelve dollars, $12.

(Signed) ROSS WILKINS,
U. S. Dist. Judge.

Read and signed in open court.

The Final Decree.

At a session of the district court of the United States for the district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, in said district, on Monday the 2d day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Hon. Ross Wilkins, district judge.

In Admiralty.

In the matter of the libel and claim of EBER B. WARD, on behalf of himself and of SAMUEL WARD, owners of the steamboat Detroit,
vs.
CHARLES THOMPSON.
No. 172.

The court having considered the evidence adduced in this cause, and the arguments of counsel for the parties thereto, and mature deliberation having been had, it is now ordered, adjudged and decreed that the libel in this cause be, and the same is accordingly hereby dismissed, and that the taxed costs of this suit be paid by the said libellant Eber B. Ward, or by Messrs. Towle, Hunt & New-

berry, his proctors of record, within ten days from this day, or that execution do issue against them therefor, which said costs, agreeably to the provisions of the act of Congress in such case made and provided, are now here taxed at the sums following and made a part of this decree, to wit:

Messrs. Lothrup & Duffield, claimants' proctors, docket fee on first hearing, of twenty dollars - - - - - - -	$20 00
And for attending on taking four depositions admitted as evidence in this cause, ten dollars - - - - - - - -	10 00
And for their disbursements for fees of claimants' witnesses and for fee of clerk and United States commissioner in this cause, forty $\frac{30}{100}$ dollars - - - - - - - - -	40 30
George W. Rice, United States marshal, his taxed costs for service of process and ship-keeping in this cause, one hundred and seventeen dollars - - - - - -	117 00
William D. Wilkins, clerk of this court, his taxed costs as such clerk of record in this cause, being thirty-three $\frac{35}{100}$ dollars - - - - - - - - - - - - - - - - -	33 35
Making in all for the taxed costs due in this cause the sum of two hundred and twenty dollars and sixty-five cents	$220 65

And thereupon the said libellant gives notice in open court that he will appeal from the foregoing decree to the circuit court of the United States for the 7th circuit and district of Michigan.

(Signed) ROSS WILKINS,
U. S. District Judge, Michigan District.

Read and signed in open court.

Bond on Appeal. Filed 9th March, 1857.

District Court of the United States for the district of Michigan.
In admiralty.

Whereas an appeal has been taken from the decree of this court, made on the second day of March, in the year eighteen hundred and fifty-seven, in a certain cause wherein Eber B. Ward, survivor of himself and Samuel Ward, owners of the steamboat Detroit, is libellant, and Charles Thompson is respondent by the said libellant: Now, therefore, the stipulators undersigned hereby stipulate in the sum of five hundred dollars to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

(Signed) EBER B. WARD.
(Signed) JOHN S. NEWBERRY.

Taken and acknowledged before me this 8th day of March, A. D. 1857. (Signed) WM. D. WILKINS,
Clerk U. S. Dist. Court, Mich., and U. S. Comm'r.

DISTRICT OF MICHIGAN, *ss.*

Eber B. Ward and John S. Newberry, parties to the above stip-

ulation, being duly sworn, depose and say, that they are each worth the sum of five hundred dollars over and above all just debts and liabilities.

(Signed) W. D. WILKINS,
U. S. Dist. Ct., Mich. Dist., and U. S. Comm'r.

Clerk's Certificate to Transcript.

DISTRICT OF MICHIGAN, *ss.*

I, William D. Wilkins, clerk of the district court of the United States for the district of Michigan, do hereby certify the above and foregoing document or record to be a transcript of the record of the said district court, in the cause named at the beginning hereof, and that the same is made up pursuant to rule IV of the rules of the Supreme Court of the United States for regulating proceedings in admiralty.

In testimony whereof, I have hereunto set my hand and affixed the seal of the district court aforesaid, at Detroit, in said district, this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-first.

(Signed) WM. D. WILKINS,
Clerk U. S. Dist. Ct., Mich.

{Seal of the district court U. S. for the district of Michigan.}

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Stated by Wm. D. Wilkins, clerk U. S. dist. ct., Mich.

And now, at this term of June, A. D. 1857, the said cause being at issue, the following proofs filed in said cause were, at the hearing, read and admitted on the part of the libellant, to wit:

Depositions of R. L. Montgomery, T. C. Smith, G. R. Givan and Stewart McDonald.

UNITED STATES OF AMERICA,
District of Michigan, city of Detroit,
Wayne county and State of Michigan, ss.

Be it remembered, that on the fifth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, John S. Newberry, esquire, personally appeared before me, William D. Wilkins, a commissioner appointed under the laws of the United States of America to take affidavits and acknowledgments of bail in and for said district, and made oath that he, the said John S. Newberry, was one of the proctors for the respondents in a suit then depending in the circuit court of the United States for the seventh circuit and district of Michigan, wherein Eber B. Ward, survivor of himself and of Samuel Ward, deceased, was appellant, and Charles Thompson was respondent; that the testimony of R. L. Montgomery, T. C. Smith, Geo. R. Givan and Stewart McDonald is necessary and material for the said appellant in the prosecution of said cause, and to establish and maintain his cause of action therein. That the said witnesses reside in Detroit, Michigan, and where the court at which he, the said proctor for said appellant, expected the said cause to be tried, is appointed by law to be held, and that G. V. N. Lothrop, esq., residing in said Detroit, is proctor of record for the said respondent in said cause, and that it is material and necessary that the depositions of said witnesses should be taken de bene esse in said cause. And the said John S. Newberry, esq., appellant's proctor aforesaid, requested me that the said witnesses might be examined, and that their depositions, de bene esse, might be taken before me according to the act of Congress in such case made and provided. Whereupon I ordered that the said Montgomery, Smith, Givan and McDonald should be examined de bene esse before me at my office, being the U. S. dist. clerk's office for Michigan, in the city of Detroit, in the State of Michigan, commencing on Monday, the eighth day of June, A. D. 1857, at 9 o'clock a. m. of said day, and that twenty-four hours' notice should be given to said Geo. V. N. Lothrop, respondent's proctor, to the end that he might, if he should see fit, be present at the said examination, and put interrogatories. And I having satisfactory proof that said notice had been given, and as well the said appellant, by Simon Towle, esq., one of his proctors, as the said respondent, by Geo. V. N. Lothrop, esq., his proctor, appearing before me at my office aforesaid, in

Detroit aforesaid, commencing on this eighth day of June, A. D. 1857, at nine o'clock a. m. of said day; and the said witnesses, Montgomery, Smith, Givan and McDonald, appearing also before me at the time and place aforesaid, I have therefore proceeded with the said examination.

Robert L. Montgomery.

And the said Robert L. Montgomery, being about the age of thirty-two years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Robert L. Montgomery, and he did thereupon depose, testify and say, as follows, to wit: In 1852 I resided in Detroit. I live here now. In spring of 1852 I was steward of the Caspian; was master of a propeller last fall; I am now fitting up a tow-boat; I knew the steamer Detroit in 1852; I knew Capt. McGregor; became acquainted with him on the first trip of the Detroit up, in 1852; his residence was in Goderich; I went up in the Detroit on her first trip to take the engines out of the steamer Belle, which was wrecked in Georgian bay; at that time Charles Thompson was in possession of the Detroit, and was on board of her; the Detroit left me at the wreck of the Belle when she came back from the Sault, having first taken me up to the Sault, as she could not land at the Belle's wreck on the upward trip, on account of the weather; I remained at the Belle's wreck about two weeks. The Detroit had been to Penetanguishene, from there to the Sault, and then back again; during these trips I was on the Detroit, in all, about 8 days; in the course of these trips I heard remarks made by Mr. Thompson about his engineer, Wilson; it was at "Owen sound," on my return from the Belle on the way to Penetanguishene; the conversation was between Thompson, myself and Burch; cannot swear positively whether Capt. McGregor was present or not, but I think he was. The conversation originated by a quarrel between the captain and the engineer; Thompson spoke in reference to this, and said that if it wasn't that Wilson, the engineer, was an important witness in a case he had, he would discharge him; that he would keep him till the suit was over, and then discharge him, and he said it was on account of the captain and engineer not agreeing, as I understood it. He didn't say anything as to the capacity or fitness of the engineer. The same day, in going into Owen sound, before this, Capt. McGregor, in working into Owen sound, had stopped the boat at some distance off from the dock, and we were both (Burch and I) surprised at his doing so, and either I or Burch asked McGregor why he did it; he answered that the engineer would run him into the dock, for he had tried to do it the day before. Nothing on this occasion passed, to my knowledge, between McGregor and the engineer. The con-

versation related with Thompson occurred on the Detroit, while lying at Owen sound. This was the first trip that Wilson had made on the boat as engineer. (Appellant's proctor objects to the conversation with Thompson as irrelevant, and to the conversation with McGregor, as incompetent.)

Cross-examination.

At this conversation between Capt. McGregor, Burch, and myself, I cannot state that any one else was present. We were standing by the pilot-house. This conversation was on the second trip of the Detroit, on her way down. I heard no conversation at all between McGregor and his engineer. I am at work for myself this season. Have been in Capt. Ward's employ for 10 or 12 years, up to this spring.

(Signed) ROB. L. MONTGOMERY.

Sworn and subscribed before me, on this 8th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Circt. Court U. S.,
for the 7th circuit and dist. of Mich'n.

Thomas C. Smith.

And the said Thomas C. Smith, being about 38 years old, and having been by me carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows, to wit:

I am an engineer; have been at that business from 18 to 20 years. I knew the steamer Detroit in 1852—I had been on several trips on her. I went on one trip on her in 1852, while Charles Thompson had charge of her. It was in the fall of 1852—I think it was either in Sept. or October—it must have been in September; I have a memorandum of the exact date at my house. This trip was about two weeks after the fire on the Detroit, at the Sault. I knew Capt. McGregor. I believe he resided in, and was a citizen of, Canada. He told me so, and that he had never been naturalized. (Conversation with McGregor taken, subject to appellant's proctors' objection as incompetent and irrelevant.) I was sent up on that trip by Capt. Ward, to see if we couldn't get another engineer on the Detroit, in the place of the one that was on board, in consequence of the burning of the Detroit, and Wilson's incompetency as engineer. Ward wished to make a change, as he was afraid the engineer would burn up the boat. (Ward's reasons taken, subject to appellant's proctors' objection.)

I met the Detroit at the Sault, and went on her from thence to Penetanguishene and back again. On this trip I had a conversation with Capt. McGregor about the engineer. I told him what my business was, and he told me I had better take the trip round with him—that Thompson was not aboard, and that he would have

to see him before he could make a change. He said that he was satisfied that there ought to be a change, and that he had been trying to have one made for a long time, but couldn't effect it; that the engineer was not such a man as he wanted on the boat. I told him why Ward wanted a change—that he didn't consider the engineer competent. McGregor said that Wilson was no doubt a good engineer; but that he had something against him that was wrong. He spoke of his trading, as one of the things he didn't like, and that he had tried to have it stopped. I think Captain McGregor said Thompson would have to keep Wilson some time yet, on account of a difficulty he had with some parties in which Wilson was a witness; but am not positive as to this. (All the above conversation with McGregor taken subject to appellant's proctors' objection as incompetent, and because no sufficient ground had been laid in the examination of McGregor.) I went on the trip to see how the engineer managed, and also to see Mr. Thompson, to effect a change. I did not see him; McGregor was gone a day after him, but came back without him, and said that Thompson refused to make a change. (Taken subject to appellant's proctors' objection.) While on the trip, I saw the engineer do several improper things. The engine was out of order when we started. It worked bad—it would jump and jar the boat; the piston-rod was loose. This was the engineer's fault, as he is paid to take care of the engine—it could have been remedied by the engineer. An engine working in that way is liable to break down, from the concussion causing something to give way. There were weights on the valves, and chains attached to hold the weights. These weights were to pull the valves (steam and exhaust valves) down, after they were raised. They were improper, and showed the engine was in bad condition, and that they were put on to make the engine work, when they should not have been on at all.

The engine, when Wilson took charge of it, was in good condition. I know it, as I fitted it out last spring.

I noticed, when I went aboard at the Sault, that the keys of the engine were battered up and abused; they were not as when Wilson took charge. I saw Wilson take a large sledge, weighing about 18 lbs., and key up, instead of taking a wooden maul, and this accounts for the keys being battered up. It is usual to use copper or wooden mauls, and such mauls were on the Detroit up to the time that Thompson took the boat, and Ward's engineers were never allowed to use anything else. I don't remember seeing anything else out of gear about the engine. It bore the appearance of neglect. It was filthy—the brasses were gummed up, and, in consequence of this, they would not feed with oil, to admit of their being lubricated, and, consequently, the brasses would wear away faster.

I had no conversation with the engineer about his management of the engine. I had no conversation with him whatever.

When I started on the Detroit on this trip, I took particular pains to observe how the engine was managed. I could see no second engineer. The boat ran day and night. I was about in the night; generally retired at 10 or 11, and didn't get up till morning. I saw Wilson only in charge of the engine. For two or three hours I wouldn't see Wilson at all, but one of the firemen would take his place at the engine; I knew it was a fireman, as I saw him firing at the engine—I saw this man firing and watching the engine at the same time. There were two firemen on the boat, and they would take it turn about—noticed this happen on the entire trip. Wilson was always on hand to work the boat when going into port. The firemen seemed to be hardy men. They only took Wilson's place when she was running, and did not attempt to work the engine. Usually, firemen are engaged about 5 minutes in firing, and then have leisure for about 20 minutes before they fire again, and it was during these intervals that they were at the engine.

Occasionally during this trip, Wilson would be absent from his engine 2 or 3 hours at a time. During these absences one of these two firemen would do his own firing and take Wilson's place in watching the engine. This is not a proper way to work an engine. The usual and proper way is to have a 2d engineer competent to take charge of an engine.

I never saw Wilson asleep at his engine. It is not proper to leave an engine at any time unwatched by a competent engineer when a boat is running. I saw the engine left unwatched in this way frequently, as we were seven days in making the trip; I can aver to a certainty to noticing this three times, and I think more frequently.

I saw Wilson several times leave the engine blowing off steam with high steam on. This was his usual way at every port we would stop at.

There were extra weights put on the safety-valve which he did not remove when he went into port to ease the pressure of steam as he ought to have done. In consequence of this, steam ran up much higher than it would have done under any other circumstances. On such occasions the steam would run up to about 35 pounds pressure; 20 to 25 lbs. was the highest she ever used to carry when Ward ran her. That was all we considered safe, and nothing over. The effect of this high steam was to strain the boiler and expose it to explosion, and every strain would weaken the boilers a little. No one was in charge of the engine at these times. The engineer would at these times be usually in his room trading and selling goods with people. He would trade at any port where there were people to trade with. At some of the ports there would be no people with whom to trade. I couldn't mention any place where I saw him trading, except at Bruce mines,

where he did his principal trading. There were other little places where he traded a little at, but I can't remember their names, as I was never up there before. At these other places I saw people going to his room and coming out with goods. He had a room of his own on board, close to the engine, where he kept his goods; think this room was about 7 feet by 6 feet. He occupied it himself alone; it was adapted with berths for three persons. I looked into this room through the door and saw the goods hanging up around—girls' hats, ribbons, laces, pins, needles, thread, calicoes, and a general assortment of such little pedler's goods. The room appeared to be pretty well filled with such goods. I saw people in there buying and trading with Wilson; paying him money, receiving change, and taking goods ashore.

At Bruce mines I saw 30 or 40 women, men, and children, come aboard and go to Wilson's room. The most of them came on at once, being waiting on the dock when we first came.

The boat must have laid at the Bruce mines about an hour; think it was the first place she stopped at after leaving the Sault. People were coming and going during that whole hour. During this hour the engineer was in his room trading. The engine during this time seemed to be neglected and blowing off steam. I noticed at this time that Wilson didn't go near his engine at all during that hour. This was on the trip from the Sault to Penetanguishene.

I saw some few people coming aboard and trading a little at other ports. Saw this same trading repeated at the Bruce mine on the trip back, but to a less extent, and we din't lay there as long, and there were not as many people. Did not see the engineer buy any goods. I did not hear Capt'n McGregor complain to the engineer on either of these occasions. He might have objected and I not heard it.

I saw and examined the Detroit's engine when she returned home, after coming off from that route. It was injured in various parts, and was in bad condition. The cylinder was injured; creases were cut up and down in it so as to cause the escape of steam; and to put it in perfect order, it would have to be bored out again. It was cut by the packing rings being tightened too tight for the cylinder; it was probably the engineer's work that caused this. It is his business to attend to that packing. A cylinder, if properly adjusted, will not get cut in that way. I could tell by the working of the engine that it was cutting there; an engineer could tell it by the noise it made. It would cost about $150 to have that cylinder taken out, re-bored, and put up again. It would cost, if done in the boat, $100. There were other injuries to the engine. The brasses were worn away; the keys battered up. The whole expense of putting the engine in order again would be about $200 at the least. As an expert, I think that expense could have been

avoided by a proper management of the engine. From what I saw on the trip, I think Wilson did not behave as a good engineer. If he was a good engineer, he did not attend to his business. I had occasion to look, and did look at the part of the boat that was said to be burned; it was at the front of the boiler, in the fire-hold. The burned part did not extend over 20 feet fore and aft, and reached near the whole way athwart ships. One side was not burned much; the other side was burned pretty bad. The floor was bricked, and was not burned any. There was no partition in front of the fire-hold separating it from the forward part of the vessel. The fire-hold is down in the bottom of the boat just below the main-deck. There was a bulk-head clear forward. They store their wood down in the fire-hold; it is bricked about 10 feet forward from the furnaces. The brick were laid in sand. The sides were sheathed with iron about 3 feet. The boat was properly fitted, and had the usual precautions to shield her from fire in the fire-hold.

The deck-beams overhead were burned into about 2 inches; they were 6 by 7 inches through. The ceiling is planking inside the timbers; this ceiling was burned through in one spot. The deck plank was burned. Don't recollect of seeing any hole where it was burned through. There was only one scuttle leading out of the fire-hold; this was forward of the boiler and the engine-room. The fire had burned this scuttle-hole all around, but not much. It had singed or scorched the hurricane deck over the scuttle-hole. The 20 feet burn I speak of was about 10 feet alongside the boiler, and about 10 feet forward of it. The Detroit is about 23 feet wide.

The usual custom, when a boat comes to a stopping place at the end of her trip, is to haul the fire out and dampen it down, and if there are any sticks, to put them in under the grates. If properly cared for, there is no danger of fire at all from that source.

Cross-examination.

I have been Mr. Ward's chief engineer about 8 years, in general charge of all his engines. What I have testified to in chief about Mr. Ward's sending me up, and his opinions about Wilson, I know from his own statements. When I name $200 as the expense of repairing the engine, I include boring the cylinder and everything necessary to put it in good order again. When I spoke of weights on the valves, I mean on the "lifting-rods," which worked the valves; those weights were not on when she came back here; I saw them on my trip on the Detroit. We went from the Sault to Bruce mines before the engineer fixed the piston-rods from working loose. The engineer did this the moment we stopped after leaving the Sault, and before he went to trading—it took him about 10 minutes, and this was where I saw him use the big sledge I have spoken of. The Bruce mines was the first place we stopped after leaving the Sault.

The tightening the rings too much is an error that is very easily made, and it may be an error of judgment of the engineer who tightens it. The only time I saw the engineer use this big sledge was on this occasion at the Bruce mines. I believe the deck over the boilers was not lined with any metal. On the sides the metal lining came up about 2 or 3 feet.

After Ward regained possession of the Detroit the cylinder was not bored out. She continued to run that fall and the next season until she was lost by a collision, in May, 1854. She was continued in use until she was lost. We did not have her cylinder re-bored. There were no repairs of consequence done on her engine the fall Ward regained her; for it was late in the fall that he got her again. Some little repairs were done; I don't remember what. To do the repairs I had estimated upon would necessitate the laying her up about a month.

I let no one but Capt. McGregor and the clerk know what I was on the Detroit for on the trip I spoke of. Don't know that the engineer knew what I was there for. I had never seen Wilson before, nor have I since.

I didn't go into the engineer's room. All the knowledge I have of its contents is from my survey through the door.

I do not say that it is customary for an engineer when his boat is stopped in port to stay by his engine, but he must attend to his steam so as to avoid an over-pressure.

The trading that I speak of, and Wilson's attention to his trading, was entirely while the boat was lying in port.

The Detroit was rather a small boat of about 350 tons burden. The engineer's room was about 15 feet from his place at the engine, I should think; it was forward of the engine.

Re-direct Examination.

It is carelessness and improper to allow an engine to run on with the rings of her engine too tight. A competent engineer (entirely competent) could easily detect this defect. It would be recklessness in a competent engineer to detect it and not to remedy this defect. It is carelessness not to discover such a defect.

The working of the Detroit was injured, and she was run at a greater expense by her owner in consequence of the repairs of her engine not being done. We fixed up the cylinder as well as we could with files. The market value of that engine was injured at least $200 by the injuries above stated.

It is usual for engineers to busy themselves about their engine when in port. They almost always have something to do. They can in a few minutes see that all is right about their engine; then all they have to do is to look after their steam.

Re-cross-examination.

Engineers generally on the lakes, with the skill ordinarily possessed, can generally tell when the cylinder is cutting, if they have competent skill. Don't think they can in all cases, because I don't think our engineers are generally such men as they should be. I think about half of the engineers on the lakes could tell and about half could not tell. The Detroit was sunk in Lake Huron, and neither her nor her engine have ever been recovered.

(Signed) T. C. SMITH.

Sworn and subscribed before me on this 8th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Cir. Ct. U. S. for the 7th circ't and dist. of Mich.

George R. Givan.

And the said George R. Givan, being about 39 years old, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon depose, testify and say, as follows, to wit: In 1852 I resided in Detroit, and was then and am now in the employ of Capt. E. B. Ward. (Witness now produces books, marked "A, B, & C.") These books are the account-books kept on board of the steamer Detroit, in 1852, by Thomas C. Robinson, who was then the clerk of the Detroit. They contain accounts of Charles Thompson in account with the steamer Detroit, and these accounts are in the handwriting of Mr. Robinson. I compared the accounts which Robinson exhibited in his testimony in the court below with these books. That account was an accurate copy from these books. All the entries against Charles Thompson are contained in the books marked "B & C," and are posted into the book marked "A." The books marked B & C are books of original entry; "B" being the cash book, and "C" the freight and passenger book. (The books marked "A," "B," & "C," are now offered in testimony by the appellant's proctor, and are objected to by the respondent's proctor.

(Signed) GEO. R. GIVAN.

Sworn and subscribed before me, on this 8th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com. Cir. Ct. U. S. for the 7th circt. and dist. of Mich.

Stewart McDonald.

And the said Stewart McDonald, being about 33 years old, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon depose, testify and say, as follows, to wit:

I reside in Detroit; am a ship-carpenter by trade. Have been engaged in that business about 11 years. I knew the steamer Detroit, which was sunk in Lake Huron, I think, in 1854. I saw her in the fall of 1852, when she came down here from the upper lakes. I examined her at that time. I examined her all throughout. She was pretty badly burned in her hold, alongside of her boiler, and forward of it, and some overhead. Think the fire went all of 20 feet forward of the boiler and close to the bulkhead. She was burned the length of the boiler aft, and more on one side, and nearly the length of the boiler on the other side. The fire burned her pretty badly on one side. The boat was 25 or 26 feet wide at the forward part of the boilers, in her hold. I don't remember the floor of her fire-hold being burned. There was a brick floor or hearth in front of her boiler, the whole width of the boat's bottom, and about 8 or 10 feet fore and aft. Think her bilge keelsons were covered with sheet iron.

In the spring of 1852 I fitted her out before she went to the Sault. She was fitted out in her fire-hold as safely and properly as boats usually are.

The deck beams were burned nearly through in a good many places. They were about 7 by 8 inches. On one side they were nearly all burned for, perhaps, all of 20 feet fore and aft. One or two of them that I cut into, when examining her, were burned off entirely to within an inch and a half of the deck. The worst place was at the forward end of the boiler.

The deck beams were more or less burned as far as the sides were. The deck plank was burned through in several places. Some large holes were burned through in the ceiling, clear through in several places. By the ceiling, I mean the inside planking on the side of the vessel. Some of the side timbers were burned. Boats of her class have these timbers made 4½ or 5 inches in thickness, doubled, being 9 or 10 inches thickness in all. These were burned pretty badly in several places. Some of these were burned in for two inches. The clamps, which are usually made of 4½ or 5 inch plank, very long, are the top plank on the side of a vessel and on the inside. They are intended to be the stay of a vessel, and the deck timbers, next on them, were pretty badly burned, in some places two inches inside, or more in fact, in some places; they were rendered entirely useless as regards strength. The deck plank was originally 2½ inches thick. At the scuttle hole one of its after beams was burned entirely off, and the deck around it was burned through. The promenade deck underneath was burned in one place directly over the end of the boiler, and between that and the hatchway, so that it was unsafe to step on it. The stringers of this deck were burned some. There were stanchions below the main deck burned more or less, but only a few of them. I had to take some of them out. I made a thorough examination of those

burnt. I went there for that purpose. In my opinion the amount of the damage done to the boat by this burning was over $1,500. Portions of the deck were so much injured as to be useless as a deck. It would be necessary to take the deck all off to repair these injuries thoroughly and make the boat as good as she was before. To take the deck off and make the deck frame and deck as good as it was before would cost just the same as above stated, because you would have to go through all the same performance to get at it. Painting would also be required. To repair all the damage done would not cost much less than $2,000. I should judge that the Detroit was worth before her injury, with her engine in, about $25,000. Should think her engine and boilers would be worth $14,000 when new. They commenced running in 1846. This burning would diminish the strength of her sides, decks, and deck-frames very materially. The deck in that part of the boat is the part where they took in all their heavy freights. After this fire it would not be safe to load heavy freights on that part of the deck. The fire reached a good part of the deck over the boiler. Immediately over the boiler there was a boiler deck, arched and raised some three feet above the main deck. The fire burned the carlines or arches of this deck off, and burned through the planking so as to leave nothing but the skin of the plank in a great many places, and so as to render this deck useless.

Cross-examination.

I was at this time attending to the repairing of all Ward's vessels in Detroit. That was my business. The Detroit came out in 1846. Boats of the Detroit's class usually last 10 or 11 years on the lakes, sometimes 12 years. They last longer than larger boats. The beams of the Detroit were not all oak—some were pine. The side timbers were of oak. I examined her immediately after she came down from the Sault, and put down some deck plank on both decks, and some deck-beams, and some stanchions under the deck-beams to keep them up. The deck-beams and stanchions were put in afterwards. I repaired her further when she laid up in the fall. I put in new ceiling, new beams, and more new deck where she had been burned. There was considerable repairs, but cannot tell how much it cost. I should think $200 or $300 was put on her in repairs that fall before she laid up. In all the repairing I ever put on her burned portion, to the best of my recollection it was about $800 worth. Some $50 or $100 was put in repairs upon her burned portion when she first came down here. I next worked on her not long afterwards. She laid here some time, and I had men working on her on the burned portion and putting in new guards for about a week. We then took out some more of the burned ceiling and put in new, and I believe put on a new boiler-deck. Am not positive as to the boiler deck, but have a strong

impression I did. I didn't work more on her burned portion until after she laid up. In the winter we did more repairs to her burned portion. Should think $300 or $400 worth of repairs were then put on her burned portion. I think no other repairs were done on the burned portion after that winter.

The repairs to the burned portion were to double the upper clamps the whole length of the burned portion; those I put in were 3 inches thick, put over the old ones, and were about 16 inches wide, and bolted through to the outside of the vessel. Don't remember whether I put clamps on on both sides or only one; I think the clamps on the other side were burnt from ¾ to ½ inch in spots; don't remember whether I put on clamps on both sides or not; I might have done it, and think I did; I believe I took pretty much all of the burned portion of the ceiling out, and I think I put additional timber on to her bilge-keelsons, but am not positive. I put in of deck-beams two or three, and I think more. My recollection as to some portions of the work I did on the boat is vague as to the cost; some I recollect very well. I cannot now give you a detailed bill of the materials and labor which was put on the repairs of the boat. If I had had charge of the keeping of the accounts I could. I superintended the work and bought the materials, and kept an account of the labor.

There was no ceiling or covering against fire on the under side of the deck timbers. The old deck of the Detroit had been renewed more than once since she came out; it was not generally well worn. There were spots where it was worn. It was made of pine plank 2½ inches thick; it was not in bad order in her alleys alongside of her boilers. I cannot say that the rest of it was in as good order as in her alleys. Her deck generally was in very good order.

When the Detroit came down from the Sault her deck between the forward end of the boiler and the forward hatchway, (8 or 10 feet,) and all the way across, was burned through in some places, and the rest of it so badly that it was dangerous to step on it. I don't remember of seeing where any holes had been cut through the deck to quench the fire. I believe I relaid the whole of the deck between the hatchway and the front end of the boiler when she first came down. I was occupied in repairing her when she first came down about 2 days.

(Signed) STEWART McDONALD.

Sworn and subscribed before me, on this 8th day of June, A. D. 1857.

W. D. WILKINS,
U. S. Com'r Cir't Court U. S. for the 7th Cir't and district of Michigan.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I, William D. Wilkins, a commissioner duly appointed by the

circuit court of the United States for the seventh circuit and district of Michigan, under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is, and the fact is, that the testimony of R. L. Montgomery, T. C. Smith, George R. Givan, and Stewart McDonald, is material and necessary in the cause, the title whereof is in the caption of said depositions named, and pending in the circuit court of the United States for the seventh circuit and district of Michigan, and that the said witnesses lived at Detroit, in the State of Michigan, the place of trial of said cause where Geo. V. N. Lothrop, esq., proctor of record for the respondent in said cause, also lived.

I further certify that a notification of the time and place of taking the said depositions signed by me was made out and served on the proctor of record for said respondent, Geo. V. N. Lothrop, esq., to be present at the taking of the said depositions, and to put interrogatories if he might think fit.

I further certify that on the eighth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, I was attended by Simon Towle, esq., one of the proctors of record for said appellant, by Geo. V. N. Lothrop, proctor of record for the said respondent, and by the witnesses aforesaid, who were of sound mind and of lawful age; and the witnesses being by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and their depositions being by me reduced to writing in the presence of the witnesses aforesaid, and from their statements, and after carefully reading the same to the witnesses, they each subscribed the same in my presence.

I have retained the said depositions in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same were taken, and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post office at Detroit, Michigan, the place where the said depositions were taken. And I do further certify, that I am not of counsel nor attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this eighth day of June, in the year of our Lord one thousand eight

hundred and fifty-seven, and of the independence of the United States of America the eighty-first.

(Signed) WM. D. WILKINS, [L. S.]
U. S. Com., duly appointed by the Circ't Court of the U. S. for the 7th Cir't and dist. of Mich.

UNITED STATES OF AMERICA,
District of Michigan, ss.

I, John Winder, clerk of the circuit court of the United States for the 7th circuit and district of Michigan, do hereby certify, that I am well acquainted with the handwriting of William D. Wilkins, esq., whose name is subscribed to the annexed depositions, and that the signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same a United States commissioner, duly appointed under and by virtue of the acts of Congress in such behalf made and provided by the circuit court of the United States of America for the 7th circuit and district of Michigan.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court, at Detroit, in said district of Michigan, this eighth day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

(Signed) JOHN WINDER, *Clerk.*

{Seal of the Circuit Court for the district of Michigan.}

Costs of taking the above depositions.

Comm's taking and certifying depns. to file, 72 fo. *a* 20	$14 40
1 oath to appt., 1 to proof, 4 to witnesses, *a* 10 c. - -	60
Filing depns. 10c.; making and fil. 33 exhibits, at 10, 30; paid clerk for certificate and seal 50c. - - - - - -	90
Total com's	$15 90
Witnesses 4, 1 day each, at $1 50 per day - - - - - -	6 00
Total - - - - - - - - - - - - - - - - - -	$21 90

Depositions of S. T. Newhall, C. C. Blodgett, and W. B. Watson, also on the part of Libellant.

In the Circuit Court of the United States for the 7th circuit and district of Michigan. On appeal from the District Court of the United States for said district. In admiralty.

In the case of EBER B. WARD, survivor of himself and of SAM'L WARD, deceased, owners of the steamer Detroit, Appellant,
vs.
CHARLES THOMPSON, Respondent.

Depositions of witnesses produced, sworn and examined on

the 13th day of June, A. D. 1857, at Detroit, Michigan, by consent of both parties, to be used as evidence on the trial of said cuse, in the said circuit court, on behalf of said appellant.

Taken before Wm. D. Wilkins, clk. U. S. district court for the district of Michigan, Simon Towle, esq., being present on behalf of said appellant, and Geo. V. N. Lothrop, esq., in behalf of said respondent.

Stephen T. Newhall.

Stephen T. Newhall, of Detroit, Michigan, being aged about 37 years, and having been by me first carefully examined, and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon depose, testify, and say, as follows, to wit: I am an engineer by profession. Have been an engineer on steamers on the lakes for over twenty years on first-class steamers. In my opinion, an engineer cannot carry on a system of trading and trafficking on his boat without neglecting his business when the steamer he is on is in service. A man who takes care of the machinery he is intrusted with and does his duty, has about all he can do to attend to his business. While his engine is running it wants the engineer's constant attention; I mean, when a boat is in motion. When a boat is running day and night, stopping at various ports, and on a long route, an engineer cannot attend to trading, and at the same time do his duty to his engine. I mean by trading, where a man is buying and selling stuff to and from the boat, and trading ashore. He has no business to leave his engine when steam is on unless there is some one there to take his place and see that fire and water is attended to. It is always customary to leave steam on at a way port, so as to be prepared to start at a moment's warning. It is dangerous to leave the steam on in that way without some one in charge. There is danger of the water becoming low in the boiler unconsciously, and of the boiler being burnt; there is also chance of explosion, and the burning of the boiler almost destroys it. In order to prevent the water becoming low, it requires constant watching. You cannot detect the water's becoming low in the boiler by the sound of the steam blowing off.

If an engineer should leave his engine with a high steam on, and the safety-valve weighted down for an hour at a time, I should not think he attended to his business. Such an engineer might know his business, but I should think that he neglected it. I have never known engineers permitted to do trading and trafficking on steamboats. It is usual to have a second engineer on steamboats; where they run day and night it is indispensable to have a second engineer.

A second engineer must know how to start and stop his engine, to judge of the height of water in the boiler, regulate the firing, and see that the firemen do their duty properly. When the first engineer is sick or absent the second engineer should be able to

take his place and run the engine. I do not consider that ordinary firemen are competent to take the place of second engineers.

In putting out fires on a steamboat, it is not a safe and proper mode to haul out the brands and wet them out and leave them there. They ought to be thrown overboard after being wet out. That I know from having been caught that way two or three times. They are liable to kindle again. It is a rule I have always made, and have generally seen practised, to throw them overboard. I got caught once within the last fifteen years by trusting to the second engineer, and he went ashore instead of attending to his business. This was contrary to my orders. I consider it a very dangerous practice to wet down the brands on the hearth and leave them there. It is the duty of one of the engineers to see that the fires are put out. The firemen do it, and the engineer's duty is to see it is done. I should consider that an engineer neglected his duty who left brands on the hearth after wetting them down, and if he was in my employ I would discharge him. An engineer who batters up his keys must either neglect his duty or be an incompetent man. The usual way to key up is with a copper hammer, or to place a piece of wood on the keys and strike on that. It injures an engine very materially to have the cylinder cut. The cylinder is the vital part of the engine. It diminishes the value of the cylinder materially and causes a great wastage of steam and of fuel. (The above testimony is taken subject to the objection of respondent's proctor as irrelevant and incompetent.)

Cross-examination.

The service in which I have been engaged as engineer has generally been in first-class boats of their time, with full appointments, and the whole of the time I have been employed on the great waters on the lakes. Of the mode of business on inferior routes, as from Penetanguishene to Sault Ste. Marie, I have no personal acquaintance or experience with. What I have said in my examination in chief, of the duties and qualifications of an engineer, is formed from my own judgment of what a first-class engineer should be, and my observation of other engineers.

Question. In the case of a moderate sized boat running on a remote route and doing a trafficking business from port to port, and stopping frequently at such ports an hour or more at a time, may not the engineer, consistent with the proper performance of his duties, have considerable leisure at such stopping places. (Taken subject to appellant's proctor's objection, as the case supposed is not like the case proved in this matter.)

Answer. I cannot answer, for such business is outside of my experience. A few hundred tons in the size of the boat does not change the responsibility of an engineer, for an engine is as perfect on a small boat as on a large one. When a boat is lying still, if the engine is in order, all the attention it requires is to observe

the steam, water, and fire. This generally devolves on the 2d engineer. One or other of the engineers should always be present. The object of having a 2d engineer is to relieve the 1st engineer in alternate watches in running, and to aid him in the performance of his duties in port.

I undertook for one season to operate without a 2d engineer, employing two firemen to relieve me, but I could not perform the duty in this manner.

There are occasionally engineers on the lakes that have risen from firemen. I have seen men, who, being intelligent and smart, got from being firemen to be 1st engineers.

Ashes and coal are frequently raked out and wet down on the hearth, and wet down in front of the boilers when the boat stops. It is by no means unusual for fires to break out on steamers. They want constant watching. They are a perfect bundle of combustibles.

It is possible for fires to take place on steamers, where all ordinary care and watchfulness has been exercised. After every caution that has been devised, as far as known at the time, steamers have taken fire and burned.

Re-examined in chief.

I have been at the Penatenguishene and the Sault, but it was before steamers commenced running. A second engineer on a small boat of 350 tons is just as necessary as on a large boat. The remarks I have made, as to battering the keys and leaving the engine with her steam on, applies as well to a small boat as to a large one. The necessity of a 2d engineer is from the inability of the 1st engineer to perform all his duties. On the large boats, such as the Western World and Plymouth Rock, they have three engineers and a greaser, who is an assistant. On boats of ordinary size they have always from two to three engineers.

(Signed) S. T. NEWHALL.

Sworn and subscribed before me on this 13th day of June, A. D. 1857.

WM. D. WILKINS,
Cl'k U. S. Dist. Ct., Mich. dist., and U. S. Comm. dist. of Mich.

Charles C. Blodgett.

And the said Charles C. Blodgett, of Detroit, Michigan, being aged about 29 years, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows: I am a mariner; I have been master of a steamer for four years; I am acquainted with the mode of doing business on steamers on the lakes. I would not deem a man competent for a 2d mate who had never sailed as an officer or a hand on a steamer or vessel. Such a man would not be competent to stand a watch as an officer

on a steamboat. I would not regard a steamboat, navigating a rocky route day and night, as being safe with a 2d mate on board, such as above described. It is a 2d mate's duty to take charge of the watch in the abrence of the mate and master. A man who is inexperienced in sailing or in handling freight, is not fit for a 2d mate's duty when a boat is lying in port. It is not customary to make officers of steam vessels from men who have had no previous experience. The officer of a steamer should commence as deck hand, then go to watchman, then to wheelsman; and having learned the duties of these posts, should know how to pilot a boat, and be fit for an officer. Some men will learn this in a few years. I think no man could learn the duties of a 2d mate by one year's service. If a fire should break out on a boat while lying in port, and it should not be discovered until it got to be a large fire, I would not consider that such a boat had a good watch kept, or any watch at all. (Taken subject to respondent's proctor's objection.) An engineer who was in the habit of trading at way ports, and at the ends of the route, and so employed a considerable portion of his time, could not take proper care of his engine, for an engine requires an engineer's constant attention while the boat is under way. (Taken subject to like objection.)

Question. Would you consider a steamboat navigated in such a manner, and with such an engineer, as being safe? (Taken subject to like objection.)

Answer. I would not; I wouldn't have such an engineer on board.

It has not been customary on steamers, in my knowledge, for engineers to trade in merchandise, cattle, flour, butter, &c. I have sailed on steamers where they used wood for fuel. I do not consider it safe for engineers to haul fire-brands out into the fire-hold and leave them there, even if wet down; they should be thrown over, for there is always danger of their kindling again. It is always customary to throw them overboard. If an engineer habitually left his brands in the fire-hold in that way, I would not consider him a safe man. I do not consider a steamboat properly manned without a 2d engineer. (All the above testimony taken subject to respondent's proctor's objection, as incompetent.)

Cross-examination.

I have served on steamboats some 10 years. I first served on a steamer as a deck hand on the North America. I have sailed on all the northwestern lakes, except Superior. My principal service has been between Buffalo, Chicago and Detroit. On all vessels there are two watches, the larboard or 1st mate's watch, and the starboard or captain's watch. The 2d mate belongs in the captain's watch. It is sometimes the case, when boats stop, to draw the ashes and embers out on the hearth in front of the boilers and wet them down there. There have been repeated instances on the

lake boats, even when properly manned, equipped and watched, of their having taken fire and burned.

(Signed) C. C. BLODGETT.

Sworn and subscribed before me, on this 13th day of June, A. D. 1857. WM. D. WILKINS,

Cl'k U. S. Dist. Ct. Mich. Dist. and U. S. Com'r Cir. Ct. 7th circuit and district of Michigan.

W. B. Watson.

And the said W. B. Watson, of Detroit, Michigan, aged about 35 years, having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows:

I am by occupation an engineer, and have been an engineer for 17 years on steamers of different classes, both large and small. The smallest boat I ever was engineer of, was of 70 or 80 tons burden; the largest was of 1,800 tons. I do not consider it safe on a boat run day and night, to run her engine without a 2d engineer. It is not safe to leave an engine with high steam on and safety-valves weighted, without an engineer to watch it. An engineer cannot trade and traffick, either on board or on shore, while the boat is running or at way ports, and do his duty to his engine. I have served on steamers where they used wood for fuel. It is the practice when they stop to haul out the brands, and throw them overboard. It is not safe to leave them in the fire-hold after being wet down. There is danger, when so wet and left, of their re-kindling and setting fire to the boat. I have known a boat to catch fire from this cause. When ashes are hauled out from the furnace it is proper to wet them down, and throw them overboard. It is not proper to leave them in the fire-hold, for then they are liable to kindle again, and set the wood on fire. I would not consider an engineer as doing his duty, who hauled the brands, ashes or coals out and left them in that manner. I would discharge such a man whenever I heard of his doing so. A boat of 150 tons, running day and night, generally carries two engineers, and some a greaser in addition. I never knew of a boat running on a passenger route on day and night, with less than two engineers.

A boat of 350 tons should carry the same number of engineers. The custom in keying up engines, so as to avoid battering the keys, is sometimes to have a copper hammer, and sometimes to lay a piece of copper or wood on the key, and then to key it up with a sledge. I would not consider an engineer who battered up his keys as taking proper care of his engine. It injures a cylinder very much to have it cut by the working of the machinery. When it is badly cut it must be taken to a boring-mill and re-bored. The valves of an engine, if properly adjusted, should drop without having extra weights attached to them. If an engineer placed weights on his valves to make them drop, I should regard him as not being able to

adjust his valves. (Taken subject to general objection by respondent's proctor's objection as incompetent.)

Cross-examination.

I was in Capt'n Ward's employment in 1852, '53, and '54, and in Gardner's employment last year. The Atlantic was lost in August, 1852.

(Signed) W. B. WATSON.

Sworn and subscribed before me on this 13th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Comm'r Circ't Ct. U. S. for the 7th Circ't and Dist. of Mich., and Cl'k U. S. Dist. C't, Mich'n District.

DISTRICT OF MICHIGAN, *ss.*

I, W. D. Wilkins, a commissioner duly appointed by the circuit court of the United States for the 7th circuit and district of Michigan to take depositions to be used in said court, and for other purposes, do hereby certify, that the above and foregoing depositions of S. T. Newhall, C. C. Blodgett, and W. B. Watson, were taken by me, at my office, in Detroit, Michigan, on June 13, 1857, at the request of S. Towle, esq., proctor for the appellant, in a cause pending in the court aforesaid, wherein Eber B. Ward, survivor of himself and of Samuel Ward, deceased, owners of the steamboat Detroit, is appellant, and Charles Thompson is respondent on behalf of said appellant, it being necessary, under the rule of said circuit court, that the testimony of the said witnesses should be by deposition; and the said appellant's proctor representing unto me that the testimony of the said witnesses was material and necessary for the said appellant on the prosecution of said cause. And Geo. V. N. Lothrop, esq., proctor for the said respondent, appearing before and prior to the taking of the said depositions, and waiving any informality in the taking of the same, assented that they might be taken without notice, and that they might be read as evidence on the trial of said cause, subject to his noted objections. And said proctors for said appellant and respondent attended before me on the taking of said depositions, which were by me reduced to writing, in the presence of the said witnesses, and from their statements, and then I read to each carefully the contents of his deposition, so reduced to writing, and he signed the same in my presence. And I will retain the same in my possession until I shall deliver the same with my own hand to the clerk of the said circuit court. And that I am not of counsel or attorney for either of the parties to the said suit, nor in any way interested in the event thereof.

Witness my hand and the seal of the district court of the United States for the district of Michigan, where-of I am the clerk, at Detroit, in said district, this 13th day of June, A. D. 1857.

{ Seal of the Circuit Court for the District of Michigan. }

(Signed) WM. D. WILKINS,
Cl'k U. S. Dist. C't Mich'n Dist., and U. S. Comm'r Cir. C't for the 7th Circ't and Dist. of Mich'n.

Costs of the above depositions.

Com'r, taking and certifying dep'ns to file, 35 folios, at 20 c.	$7 00
Fil'g depo'n	10
Do... 3 oaths to witnesses, at 10 c., 30; seal to dep'n, 20	50
Total comm'n costs	7 60
3 witnesses, 1 day's attendance each, at $1 50 per day...	4 50
Total costs	$12 10

The following depositions on the part of respondent's filed in said cause were at the said hearing read and admitted, to wit:

Depositions of F. C. M. Fraser and Hector Cameron.

In the Circuit Court of the United States for the seventh circuit and district of Michigan. On appeal from the District Court of the United States for said district.

In the case of EBER B. WARD, survivor of himself and of SAMUEL WARD, owners of the steamboat Detroit, Appellant,
vs.
CHARLES THOMPSON, Respondent.

Depositions of witnesses produced, sworn and examined, on the twelfth day of June, A. D. 1857, at Detroit, Michigan, by consent of both parties, to be used as evidence on the trial of said cause in the said circuit court on behalf of the said respondent. Taken before Wm. D. Wilkins, cl'k U. S. dist. court for the district of Michigan; Geo. V. N. Lothrop, esq., being present on behalf of the said respondent, and Simeon Towle, esq., being present on behalf of said appellant.

Frederick C. M. Fraser.

Frederick C. M. Fraser, of Orellia, Canada West, being aged about 33 years, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did thereupon depose, testify and say, as follows:

I am a mariner. Have been a mariner for 19 years, and have served in the British navy until I became a passed midshipman; then I left the navy and took command of the steamer Gore. I commanded the Gore first in 1847. I was in the business of a mariner up to the close of last season. I commanded the Gore in 1847 and 1849. I have commanded steam-vessels on the lakes for 6 years. I knew John Wilson, engineer, who was engineer in the Detroit, in 1852, under Cap'n McGregor. He is dead; he died last

fall. He served with me as engineer on the Gore during the two years in which I commanded her. He was also in my employ in 1850, on the Gore in 1850, as engineer, although I did not then command her, but was one of her managing owners, and engaged him as engineer. During the time I knew him I always considered him perfectly competent, and very careful and attentive; if I had not done so I would not have engaged him. During three years, of 1847, 1849, and 1850, his conduct as engineer, and his management of his engine, came under my attention. In 1848 I was pilot of the Government steamer Mohawk, but I also made several trips with Wilson on the Gore from Penetanguishene to Sault Ste. Marie. I also made two or three trips on her in 1851, and on these occasions I observed his management of the engine, he then being engineer of the Gore. He was the head engineer of the Gore in 1847, '48, '49, '50 and '51, on the route from Penetanguishene to Sault Ste. Marie. During all these times under my observation, I found him a skilful, careful and competent engineer. I observed him carefully, frequently spending some time with him in his engine-room. I never, at any time, saw anything in him inconsistent with the above character; but his conduct, as above given, was uniform. I think he was over 40 years old when he died.

I made one or two trips on the Detroit while Wilson was on her as engineer; he then appeared to be just the same engineer as above stated.

Cross-examination.

Wilson was a Scotchman. His home when I knew him was 6 or 7 miles from Owen sound. He was, to my best knowledge, a citizen of Canada. He had a farm at Owen sound, and on the farm he had a saw-mill and a grist-mill. I believe he went on the farm in 1845. He was steamboating on Lake Ontario in 1844. Think he built his mill in 1845 or 1846. (All the testimony about the farm and mills taken subject to respondent's proctor's objection.) I think, but am not sure, that he owned the farm and mills till he died. He has told me that they were heavily mortgaged. I believe the farm and mills was his home until after 1852. While he owned the farm and mills I have no personal knowledge whether he carried them on or not. I have heard him say at times that his father was looking after matters at his house. During the year 1847 he began to serve as engineer early in March; presume he began about the same time in 1848, '49, '50 and '51. Don't think he ever got done with his engineer's duties until about December 15th of these years. While he ran his engine in 1849 he had a regular second engineer. He always had some one with him capable of running his engine. Don't think in '47 the man he had with him was rated 2d engineer, nor do I recollect whether he was in the other years, except in 1849. In 1847 the man who acted as

2d engineer ran the engine on one or two half trips from Owen sound to Penetanguishene and back with my consent; I regarding him as competent to do so. The men Wilson had to assist him during all the above years were competent to run the engine. A man who is competent to run an engine, as a general thing, might be called competent as a second engineer. The men whom he had with him relieved him at his engine, but no regular watch and watch was kept, as Wilson was always, when asleep, close by his engine, and constantly on hand at his engine when wanted. I never knew a man who took so little sleep. These men took charge of his engine and run it while he was asleep.

It depends on the length of the route whether steamers carry 2d engineers. When they run day and night they usually do, for then most engineers want a sleep, and the engine wants watching all the time it is running.

On a boat like the Detroit, a fireman's business is chiefly to attend to the fires. They are under the engineer's immediate control. A boat like the Detroit would require about 3 firemen; men who are employed as firemen are very frequently competent to run the engine.

When a boat arrives at port it is the engineer's duty to look after the putting out of the fires, and the fireman's duty to do it. (Taken subject to respondent's proctor's objection as incompetent.) The usual plan to put out the fires in coming to port is to pull out any long sticks on the hearth and damp them down; then damp down the fire. (Taken subject to like exception.) It is the custom to throw buckets of water on the fire before taking out the brands. It was Wilson's habit to have fires so damped down. If the fire was all killed no fire could break out, but a fire may break out with the most careful of men. If properly damped down there is no danger of a fire breaking out again; by this I mean, if the fire is all extinguished. I regard this as dangerous as any other cause of fire on steamers. With the most careful men fire may remain lurking in brands, and afterwards break out on steamers.

On the Penetanguishene route I have seen all sorts of men employed as firemen; have seen half-breed Indians so employed; never saw negroes; I have seen a half-breed competent as a 2d engineer.

(All the testimony which relates to the general duties of an engineer taken subject to respondent's proctor's objection as incompetent on cross-examination.)

On a route like that of the Detroit, in 1852, the duty of a faithful engineer, while stopping at port, is, if he has perceived his engine to be out of order, to put it in order. If it is in good order, to see that his greaser goes round and oils the engine, and does anything else that he may consider necessary. There is not always something for a 1st engineer to do at little stoppages at ports.

I think it is quite possible for a 1st engineer, without a 2d engineer, while stopping at little ports, to attend to trading and trafficking without neglecting his engine. Mr. Wilson traded while engineer, 1847 and 1849, under my command, with my full consent, and never at any time neglected his engine. We sometimes stopped in these years for an hour or two hours at a place where he had full opportunity to trade, and he never, during these times, neglected his duties as an engineer.

During these years he had a man under him competent to take charge of an engine in his absence.

It was the custom of the boats on that route to trade sometimes; the officers traded, and sometimes the owners did. Trading by the owners, as a source of profit to the boat, was the custom of the route prior to 1852. It was carried on by the purser or captain for the owners. By trading, I mean buying and selling commodities of all sorts at the different stopping places on the route.

In '47 and '49 I commanded the boat, and was on it all the time. The Gore's tonnage was about 180 tons.

I cannot remember what trading Wilson did in years prior to 1852—whether it was much or little; all I remember was that he did trade. In '47 he had a room by himself. In '49 the man rated as 2d engineer slept with him.

Question. Did he have a large quantity of goods on the Gore for sale during those years? (Taken subject to respondent's proctor's objection as incompetent.)

Answer. I never remember of his having a large quantity of goods. I remember he had goods of different kinds at different times, but cannot state the amount or kind of goods. I cannot remember any man who came aboard to trade with him during these years. Don't remember his having any cattle or butter. I never saw him trading on the boat in 1852. Don't remember where his room was on the Detroit. I never noticed his doing his trading in any particular part of the boat, but only that he had my permission to trade, and believe he did do so. I cannot record any particular instance where I saw him trading. Believe he traded from the fact of his asking my permission. I can't remember that I ever saw him trade once.

During these years he did not have his room fitted up as a storeroom. (All of the above testimony, with respect to trading by Wilson, taken subject to respondent's proctor's objection as incompetent, irrelevant and not proper on cross-examination.)

Re-direct Examination.

In 1847, under Mr. Wilson, a man called McKay acted as 2d engineer.

Re-cross-examined.

I believe, but won't be certain or positive, that he was on the de-

troit in 1852, but do not know how long, but my impression is that he was on her in that year. I think I remember seeing him there while I was on the boat in the early part of her season. I think I was on her nearly every trip while she was at Sturgeon bay, as I live there. Think I saw McKay on her on one of her first trips. I think he was serving as 2d engineer. He may have acted as fireman.

(Signed) FREDK. C. M. FRASER.

Sworn and subscribed before me, on this 12th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Cir. Ct. U. S. for the 7th Circt. and district of Mich.

Exhibit A, marked by me Wm. D. Wilkins, U. S. Comm'r. Filed 11 Aug., 1856.—A. G.

In Chancery. Between Charles Thompson, plaintiff, and Eber B. Ward, defendant.

The answer of Eber B. Ward, the defendant, to the bill of complaint of Charles Thompson, the above named plaintiff.

In answer to the said bill, I, Eber B. Ward, say as follows:

I admit that a charter-party was made between myself and Samuel Ward of the one part, and the plaintiff of the other part; and as to the contents thereof, I crave leave to refer thereto when the same shall be produced.

I admit the death of the said Samuel Ward, and that I am solely interested in the account in respect thereof.

I deny that I, or the said Samuel Ward, withdrew the said boat improperly from the route in the said charter-party mentioned, but I say that she was properly withheld therefrom, under the following circumstances:

She was improperly manned, and the said Thompson also persisted, in opposition to remonstrances made to him, in retaining one Wilson as an engineer of the said boat, and, on one occasion, the said boat was nearly consumed by fire, through the wrongful conduct of the said Wilson. The said Wilson was also in the habit of smuggling, in consequence whereof the said steamboat was seized for an infringement of the revenue laws of the United States, and was detained by the collector of customs for the port of Detroit. I and the said Samuel Ward were obliged to pay, and did pay, as fine and expenses, the sum of $600, or thereabouts, in order to procure the release of the said steamboat, and the said Charles Thompson did not and would not indemnify us therefrom.

In consequence of the breach of the said agreement by the said plaintiff, we withheld the said steamboat from the said route, and

considered the said charter-party determined by the conduct of the said plaintiff.

I deny that the said Samuel Ward and I received all the earnings of the said boat except the said mail service. The plaintiff received a large amount of the said earnings. The plaintiff is also liable to me for a large sum of money for damages sustained by me by reason of the wrongful conduct of the said plaintiff in respect of the matters in the said charter-party mentioned.

The earnings of the boat while in the employment of the said Charles Thompson were not sufficient to pay the several charges payable therefrom by the terms of the said charter-party prior to the payment of any share of the earnings to the said Charles Thompson.

If the said steamboat had been continued on the route in the charter-party mentioned, the said prior charges on her earnings would not have been realized during the time limited in the said charter-party.

I submit that, as the said sum of $6,000 was never paid to me, or the said Samuel Ward, and the said charter party was terminated by the conduct of the said plaintiff, no partnership ever existed between the said plaintiff and the said Samuel Ward and myself; and that no cause of action ever accrued to the said plaintiff in this court in respect of the said matters in question in this cause.

I say further, that the several matters in question between the said Charles Thompson and myself were prior to the commencement of this suit, and still are in litigation between him and myself in the district court of the United States, of Michigan, in admiralty, in which court the said plaintiff has appeared and has answered; and the said admiralty court has decided that no partnership ever existed between the said plaintiff and myself and the said Samuel Ward; and the several other matters in question between myself and the said Charles Thompson are now being litigated in the said suit. I submit that the said proceedings in the said suit are a bar to any relief being granted in this cause.

Her Majesty's Court of Queen's Bench for Upper Canada, at Toronto, have also, in an action in the same court between the said plaintiff and myself, decided that no partnership ever existed between the plaintiff and myself and the said Samuel Ward, in respect of the said charter-party, and I submit that the said last-mentioned judgment is a further bar to the plaintiff's obtaining relief in this cause.

The said Charles Thompson has never applied for any amount of the earnings of the said steamboat. If he had, I should have been willing, as I now am willing, to show him the amounts in respect thereof; and although I submit that, as a matter of right, I am not bound to account with the said Charles Thompson respecting the earnings of the said steamboat since her seizure, I should

have been willing, and I am now willing, in an amicable manner, out of court, to satisfy the said Charles Thompson that there would not have been anything due to him.

I pray that, in case this court shall be of opinion the said matter ought to be litigated in this court, the said Charles Thompson may be decreed to pay to me the amount which he is in truth indebted to me in respect of the said charter-party, and also my costs of this suit.

(Signed) EBER B. WARD.

(Signed) JOHN ROAF, JR.

The defendant, Eber B. Ward, on the eighth day of August, 1856, appeared before me, at my chambers, in the city of Detroit, Michigan, and signed the foregoing answer in my presence, and thereupon was sworn before me that he had read the said answer, and knew the contents thereof; and that the same was true, of his own knowledge, except as to matters which are therein stated to be on his information and belief; and as to those matters, he believed it to be true.

(Signed) OLIVER M. HYDE,
Mayor of the City of Detroit, State of Michigan.

Examined: A. G.

Exhibit "B," marked by me, Wm. D. Wilkins, Cl'k and Comm'r.

In Chancery. Between Charles Thompson, plaintiff, and Eber B. Ward, defendant.

Thomas Dick called by the plaintiff.

I know Wilson, who was an engineer of the "Detroit." He was engineer for about three years on board the "City of Toronto." I considered him a very good engineer. I commanded the vessel myself at the time. I have known him since he left me. He was a very sober, attentive man, and fully competent. I never heard any objection to him as an engineer. I was present at Detroit, in January last, in a suit of a steamboat owner of Detroit, named Ward, and this plaintiff in the admiralty court. The collector of the port, named Hyde, I think, was called as a witness on the part of Ward. I think he stated in his evidence that he had given up the Detroit to Ward, and that he had not taken security when he did so. Upon being asked whether he had had anything to do with the freighting of the vessel, after being seized at the Sault, he said that he and Ward were both interested in the freight taken on board between the Sault and Detroit, as I understood his evidence. I think he said some of the freight was taken in at Mackinac. It is not on the direct route between the Sault and Detroit. He said that Ward's men, or some of them, brought the vessel down, and were paid by Ward. He was asked to produce the information upon which he had seized the vessel for smuggling.

He said he could not find it. He was also asked to produce a letter from Washington instructing him to give up the vessel to Ward, as I understood. He said he had searched for it, but could not find it.

Cross-examined.

The above is not the whole evidence given by Mr. Hyde. He said that he had received information of smuggling on board the Detroit. I think he said from the purser aboard, and that it was in writing. Wilson left my employment about the middle of 1844; he left of his own accord. I cannot speak personally as to him, since he left me.

(Signed) THOMAS DICK.

Hector Cameron.

And the said Hector Cameron, of Toronto, Canada West, aged about 25 years, being by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, as follows:

I am, by profession, a barrister, attorney and solicitor in chancery.

Question. Is there a suit now pending in the court of chancery for Upper Canada, wherein Charles Thompson is plaintiff, and Eber B. Ward defendant, being the same parties as in the suit wherein you are now examined?

(Taken subject to appellant's proctor's objection as incompetent, in the reason that the matter inquired of is a matter of record, which cannot be proved by parol evidence.)

Answer. Yes; I was of counsel in the case.

Question. Have you read the bill of complaint in that cause?

(Taken subject to like objection.)

Answer. I have.

Question. What is the nature of the suit?

(Taken subject to like exception.)

Answer. It was a suit brought by Thompson against Ward for an account of an alleged partnership existing between Ward and Thompson, in respect to the steamer Detroit, under a charter-party; the same charter-party as is stated in Thompson's answer to the case in which I am now sworn.

Question. What is the document now presented to you?

(Taken subject to same objection.)

Answer. It is a copy of the answer of the defendant in said cause in chancery, duly certified by the registrar of the court, and bearing its seal. I am acquainted with said registrar's signature and said seal, and both are genuine. By the rules and practice of said court, the solicitor for the defendant has to deliver to the registrar a copy of the answer when he files the original, which copy is to be certified by the registrar, sealed with the seal of the court, and by the

registrar delivered out to the solicitor of the oposite party as a copy of the answer on file. This is that copy. (Said copy is now marked by comm'r as "Exhibit A," and herewith appended.)

This copy has been had by me in court in this cause, in the presence of the solicitor for the defendant, who also read a copy of Ward's answer in court, and I also read this copy at the same time, and found it to be a true copy.

Question. Do you know Capt. Thomas Dick, of Toronto?

(Answer now taken subject to appellant's proctor's objection, as incompetent and irrelevant.)

Answer. I do; he lives at Toronto, in Canada, and has been captain of steam-vessels for many years. I have, in behalf of Mr. Thompson, endeavored to procure his attendance here to have his testimony taken, but could not succeed, as he said he had already given in his evidence and had his own business to attend to. He has been examined as a witness in the suit in chancery above referred to. When his testimony was taken, Mr. Ward's solicitor appeared and cross-examined him. His testimony was taken down in writing, and signed by Captain Dick. The paper I now present is an examined copy of such testimony. I compared it with the original, and found it to be genuine. (Paper herewith appended by comm'r and marked "Exhibit B," subject to objection of appellant's proctor's, as entirely incompetent.) There is no statute in Canada authorizing a person to whom a commission shall be issued from a foreign country to compel a witness to appear and testify under such commission before him.

Cross-examination.

This chancery suit in Canada was commenced May 12th, 1856. Captain Dick is alive; I saw him last Wednesday at Toronto; I have not heard of any commission being sued out here to take his testimony from the court in which I am now sworn; he never refused to give his testimony at Toronto in this suit, because he never was asked.

Question. By the law of Canada, or the practice of its courts, if a commission from a foreign country is issued, directed to a judge of the court of Queen's Bench, or other court in Canada, may not the witness named in that commission be compelled to attend and give his testimony?

Answer. There is no statute law of Canada on the subject. I know of no such practice in Canada. I never heard of a case in which that had been done. I think I have read in English law-books that, by the courtesy of nations, the court of Queen's Bench in England would exercise such a power, and perhaps, by analogy, the court of Queen's Bench in Canada might do the same.

(Signed) HECTOR CAMERON.

Sworn and subscribed before me on this 12th day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Circt. Court U. S.
for 7th Circt. and Dist. of Mich.

DISTRICT OF MICHIGAN, *ss.*

I, Will'm D. Wilkins, a commissioner duly appointed by the circuit court of the United States for the 7th circuit and district of Michigan, to take depositions to be used in said court, and for other purposes, do herby certify that the above and foregoing depositions of F. C. M. Fraser and H. Cameron were taken by me at my office, in Detroit, Michigan, on June 12th, A. D. 1857, at the request of Geo. V. N. Lothrop, esq., proctor for the respondent in a cause pending in the court aforesaid, wherein Eber B. Ward, survivor of himself and of Sam'l Ward, deceased, owners of the steamboat Detroit, is appellant, and Charles Thompson is respondent, on behalf of said respondent, it being necessary, under the rule of said circuit court, that the testimony of said witnesses shall be by deposition; and said respondent's proctor representing to me that their evidence was material and necessary for said respondent, in the defence of said cause; and Simon Towle, esq., proctor for said appellant, appeared before me prior to the taking of said depositions, and waiving any informality in taking the same, assented that they might be taken without notice, and that they might be read as evidence on the trial of said cause, subject to his noted objections; and said proctors for appellant and respondent attended before me on the taking of said depositions, which were by me reduced to writing in the presence of said witnesses; and then I read to each carefully the contents of his deposition, and he signed the same in my presence. And I will retain the same in my possession until I shall deliver the same with my own hand to the clerk of the said circuit court; and that I am not of counsel or attorney for either of the parties to said suit, nor in any way interested in the event thereof.

Witness my hand and the seal of the district court of the United States for the district of Michigan, whereof I am the clerk, at Detroit, in said district, this twelfth day of June, A. D. 1857.

WM. D. WILKINS,
U. S. Com'r Cir. Ct. U. S. for the 7th Circt. and Dist. of Mich., and Cl'k U. S. Circt. Ct., Mich. District.

{ Seal of the Circt. Court for the district of Michigan. }

Costs of the above Depositions.

Com'r taking and certifying dep'n to file, 35 folios, at 20 c.	$7 00
2 oaths to witnesses, at 10 c., 20; filing 2 exhibits, at 10 c., 20; 2 depositions, 10 c.....	50

Seal to dep'ns	20
Total comm'n costs	7 70
2 witnesses 1 day, at $1 50	3 00
Total	$10 70

Stipulation relative to testimony filed in open court June 15, *A. D.* 1857, *and used and read on the hearing.*

In the Circuit Court of the United States for the district of Michigan.

EBER B. WARD
vs.
CHARLES THOMPSON.

It is stipulated that the following statement of a case tried and decided in the Queen's Bench of Upper Canada, wherein said Thompson was plaintiff and said Ward was defendant, and being the case set up in the respondent's answer, together with the opinion and decision of the court in said case, may be read on the hearing of this cause, in proof of said case, with the same effect as if the same was in due form of a judgment record, and was duly proven; that said judgment was delivered June 28th, 1854.

LOTHROP & DUFFIELD,
For Respondent.
TOWLE, HUNT & NEWBERRY,
For Libellant.

In the Queen's Bench.

THOMPSON
vs.
WARD.

Assumpsit on Common Courts plea; non-assumpsit, payment, and set-off.

A steamer called the Belle had been wrecked in the Georgian bay, in Lake Huron, and was purchased by the defendant, who resided at Detroit, as she lay there stranded. He bought her from the insurers. She was under charter to the plaintiff at the time of the disaster, and the defendant employed the plaintiff to secure and bring ashore, with the assistance of his men, the engine of the Belle, and whatever furniture could be saved from her. The charge for this service formed the larger part of the plaintiff's demand; but he made a further claim for bringing down from Detroit in another steamer, called the Detroit, a party of men, whom the defandant had sent to assist in saving the engine and goods from the wreck, and in transporting the same men, with the engine and goods, afterwards, from the Georgian bay to the Sault Ste. Marie, at the request of the defendant. The defendant's counsel at the trial resisted any claim upon the latter account, alleging that the plaintiff was a partner

with the defendant and another person, a brother of the defendant, in the management of the Detroit, and jointly interested with them in her earnings, or rather he intimated at the trial that there was such a ground of defence, but that he had been disappointed in the expected arrival of a witness from Detroit who could have proved the agreement and other circumstances material to the defence, and that he was not in a situation, for want of precise instructions, to move to postpone the trial.

The trial was had upon the understanding with the plaintiff's counsel that if the alleged agreement, which it was contended constituted a partnership between the plaintiff and defendant in the earnings of the steamer Detroit, should be produced in the following term, the defendant should be at liberty to raise any question founded upon the agreement respecting the right to recover for freight earned by the Detroit.

The jury gave a verdict for the plaintiff for £363, of which £248 was for the service rendered by the plaintiff in and about the securing and care of the engine and goods saved from the Belle, and £78 and interest for the freight and passage money of the defendant's men, and the engine and furniture of the Belle, from the Georgian bay to the Sault Ste. Mary in the Detroit.

The agreement spoken of being produced this term on a motion for a new trial on the law and evidence, or to reduce the verdict, it appears to be an agreement between this defendant and one S. Ward, of the one part, and the plaintiff, Thompson, of the other part, dated 10th June, 1852, to this effect, that the Wards shall allow the plaintiff to run the Detroit between the Sault Ste. Marie and Penetanguishene during the remainder of the sailing season of 1852 and all the year 1853, under his the plaintiff's control and management, who is to appoint all the officers and men, except the clerk, who was to be under the control of the Wards, and subject to their directions, and that the receipts of the steamer should be applied as follows:

First, all expenses for men, repairs, and supplies to be paid; 2dly, the cost of insuring the steamer to the amount of £3,000 to be paid to the Wards; 3dly, the Wards to be paid out of the first net earnings of the steamer £1,500; 4thly, all the remaining balance of the earnings of the boat to be equally divided between the Wards and the plaintiff. The clerk of the boat to make reports of the receipts and expenditure as often as once a fortnight, furnishing Thompson and the Wards each with a copy. Thompson to be paid £75 a year out of the earnings of the boat for his services as agent for the steamer, and to guarantee the steamer against any infringements of the revenue laws. The steamer to be returned to the Wards on 1st December, 1853, at Detroit, in the same condition she was in at the time of this agreement, excepting wear and tear. In case of the steamer being lost before earning £1,500, Thompson was not to be liable to

pay any part of it; but he was to be liable for negligence or wilful mismanagement of the steamer by the persons under his control.

Robinson, C. J., delivered the judgment of the court:

"We think it is impossible to deny that the writing produced made Thompson and the Wards partners in the steamer Detroit. All that she earned above her expenses was to go, in the first place, into the hands of the Wards until £1,500 was so received by them, and then the surplus was to be divided equally between them and the plaintiff. As the freight and passage money for which the plaintiff is seeking to recover here, must have accrued directly after the Detroit was chartered by the plaintiff, that amount, whatever it was, should have gone towards the £1,500, and would be of right chargeable by the plaintiff against the Wards in the settlement of their accounts, as making up so much of the £1,500. He could claim no right to take it out of their hands; and so far as it went, it would go to accelerate the period when the plaintiff would be entitled to share with them the earnings of the boat, and in respect to all earned after that they would be partners. But the £78 in question could not be money of the partnership. It was money which the plaintiff has a right to claim in account with the Wards, the same as if it had been paid in by a third party to their clerk on board; but it should go into the pocket of the Wards on account of the £1,500. The plaintiff has no right to sue for it. At the same time, as it was sworn that no account was in fact kept of this by the defendant's clerk on board, it may have been understood that this was to be separately paid to the plaintiff, though I do not see why it should be. We do not think the affidavits contain any ground on which we could properly grant a new trial. If the plaintiff consents to strike out of the verdict the £78 and interest, we will discharge the rule for a new trial; if he declines doing so, we shall make the rule absolute on payment of costs by the defendant."

Upon the back of said stipulation is the following endorsement, to wit:

"B. R." Thompson vs. Ward.

I certify that the within is a true copy of the judgment of the court of Queen's Bench in this cause as delivered by the chief justice on the 28th June, 1854.

November 8, 1855.

J. LUKIN ROBINSON,
Reporter Q. B.
J. B. ROBINSON, *C. J.*

Decree.

At a session of the circuit court of the United States for the seventh circuit and district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit,

on Tuesday, the thirtieth day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, Hon. John McLean, one of the associate justices of the Supreme Court of the United States, and Hon. Ross Wilkins, district judge.

In the case of EBER B. WARD, survivor of himself and SAMUEL WARD, deceased, owner of the steamer Detroit, Appellant,
vs.
CHARLES THOMPSON, Appellee.
} On appeal from the decree of the district court of the United States for the dist. of Michigan.

This cause came on to be heard at the present term and was argued by counsel on either side, and the record of the court below, together with the testimony taken in the case since the appeal was entered in this court, being seen and inspected by this court, and mature deliberation being thereupon had, and the case fully considered by this court, for that it appears that in nothing is it erred in the giving of the judgment and decree by the court below in this cause: it is therefore now by this court considered, adjudged and decreed, and this court doth adjudge and decree, that the judgment and decree of the district court of the United States for the district of Michigan, rendered and entered in this cause, be, and the same is hereby, in all things affirmed with costs against said appellant, Eber B. Ward, survivor of himself and Samuel Ward, deceased, owner of the steamer Detroit, in favor of the said Charles Thompson, appellee, to be taxed in this court: and it is ordered, that the clerk of this court certify the same back to the district court of the United States for the district of Michigan, together with the amount of the costs of this court in this cause.

(Signed) JOHN McLEAN.

And afterwards, to wit, on the third day of July, A. D. 1857, came the said libellant and filed his appeal, with the affidavit thereon endorsed, and his appeal bond, as follows, to wit:

Appeal from the Circuit Court to Sup. Court.

Circuit Court of the United States for the district of Michigan.

EBER B. WARD, survivor of himself and SAMUEL WARD, deceased, Libellant and Appellant,
vs.
CHARLES THOMPSON, Respondent.

To the honorable Supreme Court of the United States:

The appeal of Eber B. Ward, the above named libellant and appellant, respectfully shows, that on the 26th day of June, anno Domini 1855, the above named libellant filed his libel in the dis-

trict court of the United States for the district of Michigan, against the said Charles Thompson, in a cause civil and maritime, to recover five thousand dollars damages for the breaches of a certain maritime contract by the said Thompson; that, thereupon, a process in personam was issued against said respondent, with a clause therein directing the marshal of the district, if the said respondent could not be found, that he should attach so much of the goods and chattels of the said respondent as should be necessary to satisfy said libellant's claim; that thereupon the marshal seized of the property of respondent the steamer Kolulah, which was discharged on the said respondent's entering an appearance in said cause, and entering into the necessary stipulations. That said respondent filed an answer and amended answer to said libel, to which this libellant filed exceptions and a replication. That in said answer was set up an objection to the jurisdiction of the court, which by the parties was brought to a hearing before the trial of the cause, and on the fourth day of February, A. D. 1856, the said district court decided that the said objection should be, and it was thereupon overruled and held for nought, and subsequently such proceedings were had, that on the second day of March, A. D. 1856, a final decree was pronounced therein by the said district court, dismissing the said libel with costs. And that after such final decree, your petitioner duly appealed therefrom to the circuit court of the United States for the district of Michigan, and the said cause was removed thereby into the said circuit court and there tried anew, and such proceedings were had in the said circuit court, that afterwards, on the thirtieth day of June, A. D. 1857, the said circuit court made a final decree in said cause, whereby it was decreed that the judgment and decree of the district court be in all things affirmed with costs, and that said appellee have execution, and that the stipulators cause their stipulation to be fulfilled; which said decree of the said circuit court is, as this appellant is advised, erroneous and ought to be reversed.

Whereupon, this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the circuit court, and the libel, answer, pleadings, depositions, evidences and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed, and a decree made in favor of the said libellant for the amount of his said claim with costs, or such other decree as to the said Supreme Court shall seem just.

(Signed) E. B. WARD, *Survivor, &c.*

DISTRICT OF MICHIGAN, *ss.*

John S. Newberry, being duly sworn, says that on behalf of

said libellant and appellant, he has this day lodged with the clerk of this court, being the circuit court of the United States for the district of Michigan, a true copy of the appeal in this cause for the said respondent and appellee, pursuant to law and the rules and practice of this court.

(Signed) JOHN S. NEWBERRY.

Sworn to and subscribed this 6th day of July, A. D. 1857, in open court.

(Signed) JNO. WINDER,
Clerk Circuit Court U. S., district of Michigan.

Copy of Bond on Appeal.

Circuit Court of the United States for the district of Michigan.

EBER B. WARD, survivor of himself and SAMUEL WARD, deceased, Libellant and appellant,
vs.
CHARLES THOMPSON, appellee, Respondent.

Know all men by these presents, that we, Eber B. Ward as principal, and Solomon Gardner and Thomas C. Smith, sureties, are held and firmly bound unto the above named Charles Thompson in the sum of one thousand dollars, to be paid to the said appellee, for the payment of which sum, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 3d day of July, A. D. 1857.

Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit, by the circuit court of the United for the district of Michigan: Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

(Signed) E. B. WARD, [SEAL.]
(Signed) S. GARDNER, [SEAL.]
(Signed) T. C. SMITH. [SEAL.]

Sealed, delivered and acknowledged, the third day of July, A. D. 1857, in open court.

(Signed) JNO. WINDER,
Clerk, and Commissioner to take bail, affidavits, &c.

UNITED STATES OF AMERICA,
District of Michigan, ss.

Solomon Gardner and Thomas C. Smith, being duly sworn, do de-

pose and say, that they are worth the sum of one thousand dollars each, over and above their just debts and liabilities.

Sworn to before me, at the city of Detroit, on this third day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

(Signed) JNO. WINDER,
Clerk, and Commissioner to take bail, affidavits, &c., district of Michigan.

In open court, July 3d, 1857.

I approve the within bond, deeming the sureties good and sufficient for the amount of the penal sum therein mentioned.

(Signed) ROSS WILKINS,
U. S. District Judge, Michigan, and one of the judges of said Circuit Court of the U. S. for said district.

Afterwards, to wit, on the twenty-second day of September, A. D. 1857, the said libellant filed the following original citation, with due proof of the service of same on the said respondent, thereon endorsed, as follows:

Original Citation.

By the Honorable Ross Wilkins, one of the judges of the circuit court of the United States for the seventh circuit, district of Michigan.

To Charles Thompson:

Whereas Eber B. Ward, survivor of himself and Samuel Ward, has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States for the seventh circuit, district of Michigan, made in favor of you, the said Charles Thompson, against him, the said Eber B. Ward, survivor as aforesaid, in a cause in admiralty, wherein the said Eber B. Ward, as survivor as aforesaid, was libellant, and you were respondent, and the said Eber B. Ward, survivor as aforesaid, has filed the security required by law; you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday, being the seventh day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Detroit, in the district of Michigan, in the seventh circuit, this third day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-first.

ROSS WILKINS,
Judge of the District Court of the United States for the district of Michigan, and one of the Judges of the Circuit Court of the United States for said district of Michigan.

DISTRICT AND STATE OF MICHIGAN, *ss.*

John S. Newberry, being by me duly sworn, doth depose and say, that on the seventeenth day of September, in the year 1857, he served the above citation upon Charles Thompson, the respondent, and appellee named therein, by delivering a true copy thereof to him personally.

JOHN S. NEWBERRY.

Sworn and subscribed to before me this 22d day of September, A. D. 1857.

GEO. G. BULL,
U. S. Commissioner for the district of Michigan.

Filed in clerk's office, circui tcourt U. S., district of Michigan, this 22d day of Sept. 1857.

JNO. WINDER, *Clerk.*
By GEO. G. BULL, *Deputy.*

Certificate.

In Circuit Court of the United States for the seventh circuit and district of Michigan.

In the case of EBER B. WARD, survivor of himself and SAMUEL WARD, deceased, owner of the steamer Detroit, Appellant,
vs.
CHARLES THOMPSON, Appellee.

I, John Winder, clerk of said court, do hereby certify that the writings annexed to this certificate, containing one hundred and two pages as numbered, are true copies of their respective originals on file and remaining of record in my office in the case above entitled.

In testimony whereof, I have caused the seal of the said circuit court to be hereto affixed, and have hereunto subscribed my name, at the city of Detroit, in said district, this fifth [SEAL.] day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-second.

JNO. WINDER, *Clerk.*

Filed 14th December, 1857.